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## Senate

The Senate met at 2 p.m. and was called to order by the President pro tempore (Mr. STEVENS).

### PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Merciful God, how precious is Your steadfast love. We take refuge in the shadow of Your wings. We thank You that You are present not only in green pastures and beside the still waters but in the valley of the shadow of death. Give us the wisdom to know You are near in sunshine and in storms.

Prepare our lawmakers to face the challenges of today with an awareness of Your willingness to lead and guide them. Remind them that You never give up Your pursuit of our hearts, and that Your love follows us into the darkest night of the soul.

Lord, let Your goodness and mercy follow us throughout the days of our earthly pilgrimage, until we dwell in Your house forever.

We pray this in Your wonderful Name. Amen.

### PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

### TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 3, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3) to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

### Pending:

Inhofe amendment No. 605, to provide a complete substitute.

Dorgan amendment No. 652 (to amendment No. 605), to provide for the conduct of an investigation to determine whether market manipulation is contributing to higher gasoline prices.

Inhofe (for Ensign) amendment No. 636 (to amendment No. 605), to authorize the State of Nevada to continue construction of the U.S.-95 Project in Las Vegas, Nevada.

Allen/Ensign amendment No. 611 (to amendment No. 605), to modify the eligibility requirements for States to receive a grant under section 405 of title 49, United States Code.

Schumer amendment No. 674 (to amendment No. 605), to increase the transit pass and van pooling benefit to \$200.

Sessions modified amendment No. 646 (to amendment No. 605), to reduce funding for certain programs.

### RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

### SCHEDULE

Mr. FRIST. Mr. President, today we return to the consideration of the highway bill. The managers are here to work through the remaining amendments this afternoon, and we will have votes on at least one amendment at 5:30, or sometime around 5:30. The specific time we will state shortly but at around 5:30 today. We have an agreement for finishing this bill tomorrow. Under the agreement, Senators may offer amendments today from the limited list we agreed to last week. We do hope most of these amendments will not require votes. There are a few remaining amendments that will need rollcall votes prior to passage. I once again thank the managers for their hard work, and I look forward to finishing the bill tomorrow so we can get it to conference as soon as possible.

### LEBANON

Mr. President, in my leader remarks for the past week, I have come to the Senate floor to briefly comment on a recent trip to the Middle East. Over the April recess I had the privilege of traveling to Israel, the West Bank, Jordan, Egypt, and Lebanon. In each of these stops, I met with officials and community leaders. I also made a special point of meeting with opposition leaders as well.

With each conversation, I learned more about the challenges facing this complicated part of the world. I became convinced that despite the deep differences that divide them, each party is committed to and wants peace and prosperity. Each side knows that dialog is the only way forward.

Nowhere has this been on more astonishing display than in Lebanon. As we all witnessed, following the assassination of former Prime Minister Rafik Hariri in February, hundreds of thousands of Lebanese citizens took to the streets to peacefully protest foreign occupation and interference. The images on television were remarkable. Central Beirut was awash in this sea of flags of red, green, and white. Proudly defiant citizens passed out roses to the soldiers who had been sent in to contain them.

It was a triumphant moment for the Lebanese people and a turning point in their country's history. Our delegation had the opportunity to walk through Martyr Square, as that square is called, where, on March 14, there were hundreds of thousands of people who came forth to express the will of the people.

Syrian military and intelligence personnel had been stationed in Lebanon for decades and had consistently denied the Lebanese people the sovereignty and territorial integrity deserved by all independent nations. In addition, heavily armed militias, such as the Deborah terrorist group, have operated with virtual impunity in Lebanon and

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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have been allowed to pursue their radical agenda.

The last few months have been times of turmoil and opportunity for the Lebanese people. For the first time in decades, the Lebanese people are free of the interference of the Syrian military.

However, it is still not clear that Syria is fully complying with the United Nations Security Council Resolution 1559. Resolution 1559 calls for the withdrawal of all foreign forces and intelligence personnel, and the disarming of armed militias. Although Syria claims to have removed all of its intelligence personnel from Lebanon, this has not been confirmed. And groups such as Deborah refuse to disarm.

Resolution 1559 also calls for free and fair elections. Our first meeting in Beirut was with members of the opposition. They represented parties and religious sects—Christian, Druze, and Muslim. These leaders were well versed in the requirements for a successfully functioning democracy. In particular, they discussed the need to restore accountability, to restore transparency, to secure an independent judiciary, and to rebuild their economy so all Lebanese people have a stake in the future. Their commitment to freedom, the rule of law, and democratic governance was truly inspiring. They are intensely aware of the importance of this historic opportunity to secure a truly free democracy, and they were all united in holding elections on time in late May. While I am hopeful, it remains to be seen how their unity will hold once that new government is formed.

We then met with the Prime Minister, Prime Minister Najib Mikati. I was greatly encouraged when he echoed many of the concerns that had been expressed earlier in the day by leaders of the opposition. He spoke of the need for an independent judiciary and respect for Lebanese sovereignty. I agreed with his assessment that economic reform required a strong private sector that is truly globally competitive.

He also expressed confidence that Syria had withdrawn all of its intelligence agents and that the Lebanese people would soon see the benefits of freedom from foreign occupation.

The Prime Minister also echoed the assurances of Parliamentary Speaker Nabih Berri that free and fair elections would take place as scheduled.

Finally, I had the opportunity to visit with participants in a program called AMIDEAST. This program was established by our State Department shortly after 9/11, seeking to rebuild a better understanding of the United States by selecting young Lebanese students to attend American schools and live with host families for a year. I had the opportunity to meet with two students who will soon be in Tennessee.

President Bush has rightly emphasized the importance of public diplomacy in our efforts to spread freedom and democracy. My interactions with the participants of AMIDEAST con-

firmed my belief that more such programs are needed throughout the region. We need to make a more concerted effort to reach out to the people of the Middle East, especially the young, and demonstrate to them that they can achieve their hopes and aspirations for peace and freedom.

My visit to Lebanon and the determination exhibited by the Lebanese people in the past few months have been truly inspiring. I hope my Senate colleagues will join me in continuing to support the Lebanese people as they strive to achieve their dream of a free and prosperous Lebanon.

Mr. President, I yield the floor.

RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The Democratic leader is recognized.

Mr. REID. Thank you very much, Mr. President.

WISHING SENATOR PAUL SARBANES WELL

Mr. REID. Mr. President, I would first like to say we have just received word that PAUL SARBANES has been taken to the hospital. He was attending the funeral of Chairman Rodino in New Jersey. We hope that for him and Chris everything works out fine. But I think everyone who is part of the Senate family should give their thoughts and prayers to PAUL SARBANES, a wonderful human being. I am confident he will be OK, but he is at a hospital now in New Jersey.

JUDICIAL NOMINATIONS AND THE NUCLEAR OPTION

Mr. President, the majority leader stated the Senate will turn to the subject of judicial nominations this week. We are ready for that. We stand united against an outrageous abuse of power that would pack the courts with out-of-the-mainstream judges.

The time has come for those Senators of the majority to decide where they stand, whether they will abide by the rules of the Senate or break the rules for the first time in 217 years—217 years—of American history. Will they support the checks and balances established by the Founding Fathers or vote to give the President unaccountable power to pick lifetime judges?

I am confident and hopeful there will be six Republican Senators who will be profiles of courage. I have had Senators come to me, even today, Republican Senators, in personal conversations, telephone conversations, today and over the weeks, who have said: We know you are right. We know you are right. But we can't vote with you.

Boy, I will tell you, that is—I told my staff today, these conversations have been some of the biggest disappointments I have ever had in my political life. To have people say they know they are breaking the rules, but they want to—I don't know all the reasons—maybe so the President likes them or they think he likes them. I don't know all the reasons. It is hard for me to intellectually understand, emotionally understand how a Senator could say they know we are right but

they are willing to break the rules to change the rules. I believe there must be at least six out there who are willing to stand up and be, I repeat, profiles in courage.

While we are ready to debate this issue, I am deeply pained we need to do so. The Senate in which I have spent the last 20 years of my life is a body in which the rules are sacrosanct. We may choose to amend the rules by a two-thirds vote. We may enter into unanimous consent agreements to waive the rules. But never before in the history of the Senate has a partisan majority sought to break the rules in order to achieve momentary political advantage.

We know that the Parliamentarian has said—and it is a nonpartisan office—this is the wrong way to go forward. I have had conversations with the Parliamentarians myself. So I repeat, never in the history of the Senate has a partisan majority sought to break the rules in order to achieve momentary political advantage, because that is what it would be. If this happens, it will be a short-term win for my colleagues on the other side of the aisle but a long-term loss for the Senate and for the American people.

I have worked so hard, Mr. President—I am not boasting about how hard; we have all worked hard, but I have spent the majority of my time in the last month on this issue. I have said privately and publicly this is the most important issue I have ever worked on in my 40 years in public service.

In an effort to avoid this confrontation and preserve constitutional checks and balances, I have made every effort to be reasonable—every effort. Here on the floor, I offered last Monday an up-or-down vote on Thomas Griffith, a controversial nominee to the DC Circuit. Last Thursday, I offered to have an up-or-down vote on three nominees to the Sixth Circuit, two of whom were filibustered last year.

These are not judges we would choose, but we know the difference between opposing bad nominees and blocking acceptable ones. In making what I thought were good-faith offers, I asked the majority: Do you want to confirm judges or do you want to provoke a fight? Regrettably, all of my proposals have been rejected—all of my proposals. There were certainly more than these, and I am not going to go through the proposals I made privately. I have only talked about those I have made separate from these offers.

I wrote to the majority leader last week and suggested two ways to break the impasse. First, I made clear my previous offer to allow an up-or-down vote on one of the most controversial nominees remaining on the table.

Second, I suggested we consider changing the rules in accordance with the rules—not too unique; if you want to change the rules, follow the rules—if the majority leader were to put his

proposal in the form of a Senate resolution and allow it to be referred to the Rules Committee.

I have spoken to Senator DODD. In fact, he was here last week to speak on this matter, but because of what was going on in the Chamber he was unable to do that. Senator DODD said he would do everything in his power as ranking member to expedite this consideration.

Neither of these good-faith suggestions have been accepted, and I guess it is clear why, I am sad to say. Republicans in the Senate demand to have it all. A 95-percent confirmation rate is not good enough. Votes on some of the most controversial nominees isn't good enough. They are prepared to do whatever it takes to achieve total victory.

Meanwhile, the White House appears to be pulling strings.

At a meeting I had in the White House, I asked the President: Mr. President, you could avoid so much controversy in the Senate. We could move forward on your agenda so much easier if you would intervene on this so-called nuclear option and help us resolve it.

He said to me: I have nothing to do with that. That is all up to you—not me but the Senate leaders—I am staying out of this.

Well, within hours after that, deputy White House Chief of Staff Carl Rove was quoted as discouraging any middle ground, all or nothing. Then Vice President CHENEY gave a speech in which he said: All or nothing. On Friday, the Washington Times—and this is really interesting for those of us who love the Senate. On Friday, the Washington Times reported that White House Press Secretary Scott McClellan “flatly rejected any talk of compromise that would confirm only some of the President’s blocked nominees.” The White House is telling the Senate how to operate? The Press Secretary of the President is telling the Senate what to do and not to do? The White House, through their Press Secretary, flatly rejects an offer of compromise. What has this body come to?

It is disturbing that the White House is playing an aggressive role to discourage compromise. Every high school student in America learns about checks and balances. The Senate advice and consent role is one of the most important checks on Executive power. The White House should not be lobbying to change Senate rules in a way that would hand dangerous new powers to the President over two separate branches—the Congress and the judiciary.

Of course, the President would like the power to name anyone he wants to lifetime seats on the Supreme Court and other Federal courts, but that is not how America works. The Constitution doesn’t give him that power, and we should not cede that power to the executive branch.

As the majority leader admitted with Senator BYRD last week, there is no constitutional right to an up-or-down

vote on judicial nominees. If there were, more than 60 of President Clinton’s nominees had their rights violated. In fact, the Senate has rejected hundreds of judicial nominations over the years. Legal scholars say 20 percent of those selected for the Supreme Court have not gone forward. Prior to 1917, there was no way to stop the filibuster, and lots of judges simply didn’t come forward. So we have rejected hundreds of judicial nominations over the years, some by an up-or-down vote, some by filibuster, and some by simple inaction. In each case the Senate was acting within its authority under the advice and consent clause of the Constitution.

My friend, Senator FRIST, says he wants a fairness rule, but a rule allowing the President to ram extreme judges through the Senate is unfair to the American people. Meanwhile, we need to get back to the people’s business and put people over partisanship. We were sent here to govern, and right now we are not doing that. Gas prices are up, families have lost health insurance, pension plans are unstable, to say the least, and the situation in Iraq is grave. The Senate, literally, is fiddling while Rome is burning.

Mr. President, I am going to continue to talk to the majority leader. I am going to talk and talk and talk as much as I can to try to resolve this issue. I know there are other efforts at compromise under consideration. But unless cooler heads prevail, this confrontation will be upon us later this week. If it comes to that vote, Democrats and responsible Republicans—if it comes to that vote, Democrats in the Senate and responsible Republicans in the Senate will vote to preserve checks and balances and preserve the principle that the Senate rules must not be broken.

Mr. President, the eyes of the Nation are upon us. There have been few moments of truth like this one in the history of this great institution. The American people will see whether the Senate passes this historic test.

Would the Chair announce what the business is before the Senate?

The PRESIDENT pro tempore. The pending business is H.R. 3.

Mr. REID. There is no time for morning business this morning; is that true?

The PRESIDENT pro tempore. There has been none requested.

Mr. INHOFE. Mr. President, we are at the point now where I believe we are going to hear from a number of Members who have submitted amendments and some who simply want to talk about the bill, some who want to talk about the formulas. We have had some requests for time. It is my understanding that we are going to have our vote at 5:30. It does mean we have limited time between now and then. Let me just make a comment or two about this and then ask—

Mr. REID. Would the Senator yield for a unanimous consent request?

Mr. INHOFE. Of course.

Mr. REID. Mr. President, I ask unanimous consent that amendments numbered 638, 690, and 723 be removed from the list of first-degree amendments to H.R. 3.

The PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

AMENDMENT NO. 619 TO AMENDMENT NO. 605

Mr. REID. On behalf of Senator LAUTENBERG, I call up amendment No. 619.

The PRESIDENT pro tempore. Without objection, the pending amendment is laid aside and the clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. LAUTENBERG, proposes an amendment numbered 619.

The amendment is as follows:

(Purpose: To increase penalties for individuals who operate motor vehicles while intoxicated or under the influence of alcohol under aggravated circumstances)

Strike section 1403 and insert the following:

**SEC. 1403. INCREASED PENALTIES FOR HIGHER-RISK DRIVERS DRIVING WHILE INTOXICATED OR DRIVING UNDER THE INFLUENCE.**

(a) IN GENERAL.—Section 164 of title 23, United States Code, is amended to read as follows:

**“§ 164. Increased penalties for higher-risk drivers driving while intoxicated or driving under the influence**

“(a) DEFINITIONS.—In this section:

“(1) BLOOD ALCOHOL CONCENTRATION.—The term ‘blood alcohol concentration’ means grams of alcohol per 100 milliliters of blood or the equivalent grams of alcohol per 210 liters of breath.

“(2) DRIVING WHILE INTOXICATED; DRIVING UNDER THE INFLUENCE.—The terms ‘driving while intoxicated’ and ‘driving under the influence’ mean driving or being in actual physical control of a motor vehicle while having a blood alcohol concentration above the permitted limit as established by each State.

“(3) HIGHER-RISK IMPAIRED DRIVER LAW.—

“(A) IN GENERAL.—The term ‘higher-risk impaired driver law’ means a State law that provides, as a minimum penalty, that—

“(i) an individual described in subparagraph (B) shall—

“(I) receive a driver’s license suspension;

“(II)(aa) have the motor vehicle driven at the time of arrest impounded or immobilized for not less than 45 days; and

“(bb) for the remainder of the license suspension period, be required to install a certified alcohol ignition interlock device on the vehicle;

“(III)(aa) be subject to an assessment by a certified substance abuse official of the State that assesses the degree of abuse of alcohol by the individual; and

“(bb) be assigned to a treatment program or impaired driving education program, as determined by the assessment; and

“(IV) be imprisoned for not less than 10 days, or have an electronic monitoring device for not less than 100 days; and

“(ii) an individual who is convicted of driving while intoxicated or driving under the influence with a blood alcohol concentration level of 0.15 percent or greater shall—

“(I) receive a driver’s license suspension; and

“(II)(aa) be subject to an assessment by a certified substance abuse official of the State that assesses the degree of abuse of alcohol by the individual; and

“(bb) be assigned to a treatment program or impaired driving education program, as determined by the assessment.

“(B) COVERED INDIVIDUALS.—An individual referred to in subparagraph (A)(i) is an individual who—

“(i) is convicted of a second or subsequent offense for driving while intoxicated or driving under the influence within a period of 10 consecutive years;

“(ii) is convicted of a driving-while-suspended offense, if the suspension was the result of a conviction for driving under the influence; or

“(iii) refuses a blood alcohol concentration test while under arrest or investigation for involvement in a fatal or serious injury crash.

“(4) LICENSE SUSPENSION.—The term ‘license suspension’ means, for a period of not less than 1 year—

“(A) the suspension of all driving privileges of an individual for the duration of the suspension period; or

“(B) a combination of suspension of all driving privileges of an individual for the first 45 days of the suspension period, followed by reinstatement of limited driving privileges requiring the individual to operate only motor vehicles equipped with an ignition interlock system or other device approved by the Secretary during the remainder of the suspension period.

“(5) MOTOR VEHICLE.—

“(A) IN GENERAL.—The term ‘motor vehicle’ means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways.

“(B) EXCLUSIONS.—The term ‘motor vehicle’ does not include—

“(i) a vehicle operated solely on a rail line; or

“(ii) a commercial vehicle.

“(b) TRANSFER OF FUNDS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), on October 1, 2008, and each October 1 thereafter, if a State has not enacted or is not enforcing a higher-risk impaired driver law, the Secretary shall transfer an amount equal to 3 percent of the funds apportioned to the State on that date under paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402 to be used in accordance with section 402(a)(3) only to carry out impaired driving programs.

“(2) NATIONWIDE TRAFFIC SAFETY CAMPAIGNS.—The Secretary shall—

“(A) reserve 25 percent of the funds that would otherwise be transferred to States for a fiscal year under paragraph (1); and

“(B) use the reserved funds to make law enforcement grants, in connection with nationwide traffic safety campaigns, to be used in accordance with section 402(a)(3).”.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by striking the item relating to section 164 and inserting the following:

“164. Increased penalties for higher-risk drivers driving while intoxicated or driving under the influence.”.

Mr. INHOFE, Mr. President, as I was saying, we do have a lot of people who want to be heard on this bill. I believe I have said several times this could very well be the most significant vote we will have this year. It is a vote that we actually had last year. Senator JEFFORDS and I worked for 3 years on this bill, along with Senator BOND and Senator BAUCUS. The four of us have been shepherding this bill. Now it looks as if we are very close to getting a bill.

Last year, our bill was funded at \$318 billion. It was passed on to conference, and we lacked one signature of getting a conference report, so it did not happen. As a result, we are operating on our sixth extension. I know the occupant of the chair understands the significance of this. It means all the reforms we have in here, streamlining reforms, will not be a reality if we are not able to pass a bill, if we have to operate on a seventh extension. It means we are not going to have any help for the donee States. We will not have any help for the sparsely populated States. We are not going to be able to have the commission that is going to look into new ways of funding highways. We started off back in the Eisenhower administration. Since he started the national highways program, we have been funding them essentially the same way ever since, but this bill appoints a commission that is going to be creative and do a lot better job than we have done before.

The formula—you always find someone objecting to the formula. It takes into consideration about 10 different things: size of the State, density of the State, the donor status of the State—things that are very significant in order to be totally equitable. One of the factors is the highway fatalities in the State on a per capita basis. That has to tell you something. If one of the States has a lot more fatalities on the highway, it means they have greater needs. My State of Oklahoma has terrible bridges. We are ranked dead last. We were tied with the State of Missouri, but I think we are now last. We want to correct that. We want this bill. It is very important that we have this bill. We are going to have our vote tomorrow, and we want to hear from anyone down here.

I ask Senator JEFFORDS, did you want to make any comments at this time?

Mr. JEFFORDS. No.

Mr. INHOFE. I don't see Senator BAUCUS. I ask Senator BOND, do you want to make any comments?

Mr. BOND. No.

Mr. INHOFE. Senator THOMAS.

The PRESIDENT pro tempore. The Senator from Wyoming is recognized.

Mr. THOMAS. I will not take long. I know there is lots for us to do, but I wanted to come over to the floor and express my support for the movement and the passage of the highway bill. I, first of all, wish to thank the chairman and the ranking member for the work they have done. Having been on that committee in years past, I know how difficult a task it is and what a great job they have done.

We have been now some 5 or 6 years waiting to do what we really need to do, clearly need to do. All of us have highway problems. All of us have need for an infrastructure. It is certainly one of the things that creates more jobs than almost anything we could possibly have. And the transportation system is something we clearly need

for the future. So I guess I am a little disappointed that it has taken as long as it has for us to move forward. But now we do have an opportunity to do that, and certainly it is the time to do it. This bill has been reviewed by almost everybody in the place. We don't need to spend a lot more time talking about it. Certainly, there will be some amendments. However, the House has passed a similar bill. I think we should stick to the highway funding as it was set up in the budget, frankly, but that is an issue that will be resolved in time.

So I just hope we can pass it here. I think these decisions as to how the money is used should be made in the States, and we do not want a bunch of decisions made here as to the details of transportation.

I will not take more time, but I do want to say that it is discouraging and frustrating for us to take this long to move forward. We have so many things out there we need to be doing. The Energy bill is just as important as this, perhaps even more. We have laid it aside and continue to wait. We need to be looking at the future both in the highway bill and energy as to where we are going to be in 10 or 15 years and make some policy decisions with respect thereto.

One of the real problems, of course, with highway funding is that all, practically all of the work that is done on highways is done by contracting with our various State departments that handle highways. When you do contracting, you have to have knowledge of the time ahead as to what your financing is going to be because contracting is done in the future.

So I hope we can get on with this bill. I think we need to be talking about budgets. That is one of the things that is very important to us. Energy is very important to us. I think we need to get over this idea of stalling.

I noticed the minority leader has said we are talking about breaking the rules. We are not breaking the rules. We are going to change the rules so that we can move forward. I think it is time to stop the chatter about that as well and move on to something that we can do.

So we need a bill. Extensions are no longer acceptable. Our State DOTs cannot wait long periods of time. Our construction time in Wyoming, for example, is very short during the summer.

So, Mr. President, I again thank the managers of this bill for moving forward. Let's get it done.

I thank the Chair.

Mr. INHOFE. Mr. President, I thank the Senator from Wyoming for an excellent point, and that point is we are on our sixth extension now. Some extensions are 30-day extensions, some of them are 6-month extensions, and you can't expect the contracting community out there to be able to plan in an efficient way to spend the money to build the highways, to build the

bridges, or repair the highways if they can't plan in advance. This would give us 5 more years on a 6-year authorization. It is absolutely imperative.

I say to my colleagues that we are now operating on the bill, so whoever seeks recognition can get recognition as he or she desires.

The PRESIDENT pro tempore. Who yields time?

Mr. INHOFE. I don't believe we are yielding time.

The PRESIDENT pro tempore. Who seeks recognition?

The Senator from Hawaii.

Mr. AKAKA. Mr. President, I ask unanimous consent to speak as in morning business for 15 minutes.

Mr. INHOFE. Reserving the right to object, I don't want to object, but we have a short period of time until we have to go to the highway bill vote. We have a long list of people who want to speak on the highway bill. What I would ask of the Senator from Hawaii is that instead of his speaking for 15 minutes, he go ahead and start, and if anyone wants to seek recognition on the highway bill, they could do so.

The PRESIDENT pro tempore. Does the Senator withdraw his request?

Mr. AKAKA. Mr. President, I will not ask for time. I ask unanimous consent to speak as in morning business.

The PRESIDENT pro tempore. Without objection, it is so ordered.

(The remarks of Mr. AKAKA pertaining to the introduction of S. 1037 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDENT pro tempore. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, we have several requests to speak prior to 4 o'clock and then more prior to 5:30 on the highway bill which is the regular order. So far, those speakers who want to speak in morning business have been kind enough to say that they would not mind being interrupted, if necessary, if someone came down to talk about the highway bill. I appreciate that and remind my colleagues that we don't have a lot of time between now and the vote at 5:30.

The PRESIDING OFFICER (Mr. BURR). The Senator from North Dakota.

Mr. DORGAN. Mr. President, I intend to introduce a bill and speak about it briefly. I will do that with the proviso that if someone comes and wishes to speak about their amendment on the highway bill, I will be happy to relinquish the floor.

Is the Senator from Iowa wishing to speak on an amendment?

Mr. INHOFE. The Senator from Iowa, chairman of the Finance Committee, has a title under this bill. If you don't mind, I am sure there will be time.

Mr. DORGAN. I am happy to defer. I know this highway bill is important to get passed as soon as possible. I am happy to yield the floor and perhaps, following the Senator from Iowa, if there is an opportunity, I will make my statement.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, it should be quite obvious from America's increasing dependence on foreign sources of oil that it has now reached a very critical threshold which calls for immediate action. This bill before us is part of our immediate action, as it has some things in it to increase our availability of domestic supplies of energy. Global oil prices and supplies remain beyond our reach, just as surely as our own demand here at home will remain constant. Abroad, oil prices and supplies are at best in a state of flux, very unpredictable. At worst, you could say that things are beyond our control.

Our obvious goal in a lot of our energy legislation—some of it is part of this bill and part of the debate we had 2 years ago on the highway bill—is to get some of this under our control by having less dependence upon foreign sources of oil.

In China, for instance, the competition for oil is unprecedented. So determined is China to protect itself and its burgeoning growth against global uncertainty, they have recently secured supplies from both Canada and Venezuela and are actively seeking oil from producers upon whom the United States has traditionally relied. Some experts suggest that we have now reached our global supply limits, perhaps even that we have exceeded them.

If they are correct—and of course we hope they are not—we face more shortages and rising prices. The answer to these very real and vexing questions about the global security of supply and price for America's oil demands are far beyond this Senator and indeed even beyond this legislation before the Senate.

However, I believe, with this amendment as part of the managers' package, we will go a long way toward reducing our domestic dependence upon oil dedicated to our transportation sector. We are gulping vast amounts of imported oil in an increasingly futile attempt to quench our thirsty addiction to petroleum. Today, our transportation sector accounts for two-thirds of the total United States demand. This forces us to import a whopping 60 percent of our petroleum needs.

I remember a time when we thought it was inconceivable America would ever exceed even 50-percent reliance upon foreign oil. Yet, we have, and then we exceeded even that, until here we are today at more than 60 percent. What can we do now to alleviate the problem? How can we do so here at home?

The President pointed something out when he spoke last week about the pressing needs to develop and implement comprehensive national energy policy, and I think it bears repeating if only through paraphrasing. President Bush indicated that technology would provide our Nation with the means to reduce our demand for petroleum-based fuel, thus reducing the high price of

gasoline. The President also stressed we must embrace domestic alternative fuels as a critical midstep on the pathway toward hydrogen, which may well prove to be our ultimate fix. But the simple fact remains that a sustainable, affordable hydrogen program is still decades away. Transitioning America away from our entrenched dependency on foreign petroleum fuels to cleaner, cheaper domestic alternatives is occurring right now here at home. We should not be oblivious to it. I agree with the President that these domestic alternatives need to be embraced and encouraged. To that end, therefore, as chairman of the Finance Committee, I have developed a proposal entitled the "Volumetric Excise Tax Credit for Alternative Fuels." It would be just like VEETC for ethanol and biodiesel that we passed last year, only extended to alternative fuels. This proposal would help significantly accomplish that goal of being less dependent upon foreign sources of energy.

The VEETC proposal would provide for the expansion and modification of the Volumetric Excise Tax Credit for Alternative Fuels. Our proposal will expand last year's excise tax formula, as it relates to ethanol, to include an excise tax credit for all domestic alternative fuels which would displace imported petroleum. This is how it would work. Some fuels, such as natural gas, presently pay a partially reduced rate of excise tax into the highway trust fund.

However, because these motor vehicles exact the same amount of damage to our roads and highways, my amendment would have them pay an increased rate of Federal excise tax into the highway trust fund. With this mechanism, the President's objective of displacing as much imported oil as possible is met. As importantly, the increased excise tax payments would go a long way toward increasing revenue into the highway trust fund for the near term and well into the foreseeable future.

This is not a new concept. Congress passed, and the President signed into law, a similar provision last year providing the same treatment for ethanol and biodiesel. In an effort to further encourage other domestic alternative fuels, this new VEETC amendment that we will be taking up which enjoys broad bipartisan support, it constitutes a simple expansion on the part of the framers to include other alternative fuels which displace imported petroleum-based fuels. Adoption of the VEETC for alternative fuels would constitute a win-win. It puts more money into the highway trust fund, while at the same time promoting domestic sources of motor fuel.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, again, I seek permission to speak as in morning business. I will relinquish the floor if somebody wishes to speak about the highway bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### PIRACY AND COUNTERFEITING BY CHINA

Mr. DORGAN. Mr. President, I am introducing some legislation today, along with Senator LINDSEY GRAHAM from South Carolina to construct. It deals with the issue of piracy or counterfeiting of goods by China. It relates to the substantial loss of U.S. jobs, and \$200 billion in harm to the U.S. economy as a result of the piracy and counterfeiting that is going on in China.

What is our Government's reaction to this problem? Our government's reaction to date can be characterized as somewhere between looking worried, a deep frown, or thumb-sucking. Essentially, it is doing nothing to stand up for this country's economic interests.

Let me describe the problem. The U.S. Trade Representative has concluded that: "China has not resolved critical deficiencies in intellectual property rights protection and enforcement and, as a result, infringements remain at epidemic levels."

In short, the Chinese are cheating, counterfeiting American goods and robbing jobs from our country. Chinese fake goods coming into the United States grew 47 percent last year. The Chinese government is not doing anything about it. Investigations of counterfeiting in China, as you see, have taken a nosedive. The vast majority of products in the United States that are counterfeits or pirated are Chinese; 67 percent of the counterfeit products in this country are Chinese counterfeit products.

The question is, What are we going to do about it? Senator LINDSEY GRAHAM and I are offering a sense of the Senate resolution—and we will ask the Senate to vote on it at some point—calling for the immediate launch of a WTO case against China for gross violation of U.S. intellectual property rights.

On April 29, last month, the U.S. Trade Representative released a report finding that China had broken its promises to crack down on this piracy and counterfeiting. They have done nothing. They promised the moon, and they have done nothing. The question is, Will this country stand up for its own economic interests?

Mr. President, let me give you specific case that I think is interesting. Time magazine wrote recently about a new car produced by Chery, an automobile company in China—that's right, not Chevy, but Chery the Chery Automobile Company.

A Chinese firm called the Chery Automobile Company has stolen production-line blueprints for a new GM car called the Chevrolet Spark. The Chery Automobile Company is going to be producing that car, which they call the QQ, and they plan to sell five models, including an SUV, in the United States. Chery has teamed up with the man who brought the Subaru to America in the 1960s. Their plan is to import up to a quarter of a million Cherys starting in 2007.

GM is now in court. General Motors filed an action alleging that their production-line blueprints were stolen.

But it is not just that. It is so many different products. Take a look at the products that all of us know—films, publishing, software, electric equipment, automotive parts, on and on—have been counterfeited and pirated. It means American lost jobs and a higher trade deficit to the tune, we are told, of \$200 billion in piracy and counterfeiting.

Now, given that we had specific promises by China that they would begin to crack down on this with respect to their entrance into the World Trade Organization, and the fact we know they have done nothing—our own U.S. Trade Ambassador says they have done nothing, that it is "epidemic"—when will this country take action?

Winston Churchill once told a story of being taken to a carnival by his parents. He was speaking to his adversary in the House of Commons, and he told the story about seeing the sideshow's big canvas sign that says, "Come Inside and See the Boneless Wonder," a man apparently born without bones. Winston Churchill said he was with his parents that day; his parents thought it was too traumatic to take a young boy into a carnival sideshow to see the boneless wonder. He never got to see it until that day on the floor of the House of Commons. When he addressed his adversary, he said, "Finally, I see a boneless wonder."

Boneless wonder is a good way to describe, in my judgment, those involved in trade policy in this country, who fail to stand up for this country's economic interests, who don't have the backbone to stand up and say it is in our country's interests, in the interest of our jobs, to take action against those who pirate or counterfeit American intellectual property. I have talked often on the Senate floor about trade with China and Japan and Korea and with Europe. There has been a lack of spine on many fronts. In this case, I am speaking specifically about counterfeiting and piracy by the Chinese, with whom we have the largest trade deficit in history.

Now we see that the USTR says it is in epidemic proportions—piracy and counterfeiting—and yet nothing is being done. The question is, Will we do something? Will we finally have the nerve to say we want a WTO case to be commenced against the Chinese?

This is a sense of the Senate resolution asking that the USTR commence a WTO case against the Chinese. Again, it is not me who says that the Chinese have cheated. The U.S. Trade Representative said himself that: "China has not resolved of the critical deficiencies in intellectual property rights protection and enforcement and, as a result, infringements remain at epidemic levels."

That amounts to massive wholesale stealing going on. It affects this country in a very detrimental way. Will we

begin to finally take action? I have mentioned before that part of our trade problem is due to the incompetence of our trade negotiators. There is no other way to describe it. In the bilateral trade negotiation that occurred with China about 5 years ago, our negotiators agreed that China would impose 25-percent tariff on any American cars we tried to sell in China, and we would impose only a 2.5-percent tariff on Chinese cars coming into this country. That is fundamentally incompetent. I don't have any idea who would have agreed to that, but it obviously pulls the rug out from our country's interests.

Now, we hear that General Motors has filed an action against Chery Automobile Company in China for producing a car called the QQ, which General Motors says was stolen from the production blueprints of General Motors for one of their vehicles. And cars like these are headed to our market soon, where the floodgates are wide open.

It all comes around. Incompetent negotiators on our side, piracy and counterfeiting on their side, and unwillingness on our side to stand up for this country's economic interests; and meanwhile we watch the exodus of American jobs and the sapping of our economic strength because of trade rules, trade agreements, and the lack of enforcement that represents a basic unfairness to the producers and workers in this country.

So the question remains: When will our Government stand up for American workers? When will our Government stand up for American producers? I am talking about unfair trade, and about a Chinese Government that does nothing about it. It is past the time—long past—when our country should expect action. The citizens of our country deserve a Government that does better for them in demanding fair trade.

So my colleague and I will introduce the resolution today. It is a sense of the Senate resolution that calls for a WTO case to be filed by our Trade Ambassador against China for gross violations of U.S. intellectual property rights.

There are so many examples of piracy and counterfeiting that I will not begin to chronicle them, but I will say this: I know that many U.S. companies that are victimized by counterfeiting do complain mightily, but they are also very nervous about an action being filed against this kind of stealing and cheating. It is time for them to decide whether they are interested in solving the problem or just complaining about it. If they are interested in just complaining about being victims, then they are going to ultimately be happy if the trade ambassador continues to do nothing. But in my judgment, it is a disservice to our country's interests at a time when we have the highest trade deficits in history, at a time when we are trying to hang on to American jobs, trying to stem the flow



of American jobs outside of our country that are moving abroad in wholesale numbers. It is a disservice to our country's interests for us not to stand up when we see unfair trade and take action against it.

That is why Senator LINDSEY GRAHAM and I have submitted this resolution today. That is why I hope in the coming days and weeks we will be able to have an opportunity for the Senate to express itself. Does the Senate believe we ought to have our trade ambassador file an action with the WTO, or does it not believe that? Does it believe this is a serious problem, or does it think it is simply an annoyance?

I hope most Senators will agree with Senator GRAHAM and myself that this is a very serious problem and one that deserves an opportunity to be corrected.

Mr. President, let me now take a moment to congratulate Senator INHOFE and Senator JEFFORDS for their work on the highway bill. This is business that has been around the Senate for over 2 years. Most all of us wished—and I know no one more than the chairman and ranking member—we had passed a highway bill a long while ago, but it has taken some effort to get the kind of highway bill to the floor of the Senate that they have been able to get here.

I very much appreciate their leadership. Is this bill perfect? No, but it is an awfully good bill. Tomorrow, hopefully, when we finally pass this legislation and get to conference, my hope is the conference will have the wisdom to accept the Senate bill. There is a very big difference between the Senate bill and the House bill. My thoughts go with the chairman and ranking member and the conferees as they go to conference because this is a very important piece of legislation, and I compliment them.

Finally, all the papers warned us this will be some momentous week with respect to the so-called nuclear option and other issues. Just as I think all of us feel good about talking about a highway bill which is important and which strengthens this country, I think all of us would much prefer to be on the floor of the Senate talking about jobs, health care, energy, and about all the other issues that are so important. My hope is at the end of this week, we will get back to those issues as well.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, I thank the Senator from North Dakota for his comments on the highway bill. It is very significant. It probably could very well be the most significant bill we will be voting on this year.

If I can get the attention of the Senator from North Dakota, I have had occasion to give four 1-hour China speeches on the floor of this Senate in response to the 2004 report to the Congress on the China Economic and Security Commission. I do not know wheth-

er the Senator from North Dakota has read that yet, but I am going to call that up with a resolution to implement the recommendations.

This is far more serious than even some of the issues the Senator from North Dakota mentioned in his excellent comments. If we look at how China is now using up the resources we are depending upon, if we go to any of the countries in Africa, such as Nigeria and the coast of Guinea where they have huge reserves, we find the Chinese are building huge stadiums, coliseums, and roads, and paying for it themselves to get the corner on those markets we will be dependent upon at some time. They are dealing with countries such as Iran and exchanging nuclear technology.

I have been deeply concerned about the Chinese, not just in what they have been able to do in terms of their nuclear capabilities, but also their conventional capabilities. It was in 1998 that GEN John Jumper came forth and said something that startled a lot of people, but we knew it all the time, and that is the Russians are now making a strike vehicle, an SU-30, that is better than our strike vehicles, the F-15 and F-16. And then we find out China has purchased, in one purchase, 240 of these vehicles. Their buildup of conventional forces and what they are doing economically to this country is very disturbing to me. It has to be addressed.

I hope the Senator from North Dakota will join us in trying to implement the recommendations of this 2004 study—it was 4 years in the making—of the security and economic problems we are facing today as a result of the Chinese buildup.

Mr. DORGAN. Mr. President, if the Senator will yield for a question. I agree with what Senator INHOFE has described with respect to the Chinese, and I think he would agree neither of us is attempting to paint the Chinese as an adversary. Our intention is to make China a long-term friend of our country, but for that to happen, the Chinese need to do the right thing on trade and security issues.

I have described today with respect to piracy and counterfeiting some very troubling issues, and Senator INHOFE knows and I know and others know there are some very serious and very troubling issues with respect to international security. That is the movement of critical materials and technology to the wrong parts of the world, the purchase of that technology by the Chinese.

Our intention and our hope is to work with the Chinese. But I think a country cannot sit back and say, whatever happens happens, whatever you are doing, that is fine. You have to stand up to things you find troubling. People take advantage of you if you let them take advantage of you. The same thing is true of countries, whether it is trade or international security. We have a responsibility to speak out with

respect to issues, whether it be the Chinese or others, when we think they are an affront to our economic interests and our long-term national interests.

I appreciate the comments of Senator INHOFE.

Mr. INHOFE. Mr. President, first, this Commission worked 4 years. They studied it from a security and economic standpoint. It was bipartisan and had every expert one can think of on the Commission. They came out with some very strong recommendations. I would hope the Senator from North Dakota and the Senator from South Carolina might want to expand what they are doing after reading the recommendations. Maybe we can join forces at a later date and have a resolution recommending the adoption of the recommendations of this Commission.

Mr. President, again, we are on the highway bill. Senator JEFFORDS, the ranking member of the EPW Committee, and I worked so well together on this. I have to say before he makes his comments, there are a lot of provisions in this bill that he likes better than I like, and there are provisions I like better than he likes. That is what it is, that is how we got to where we are today. It has been a great working relationship, and I anticipate we are going to be successful in getting this bill passed.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I thank the Senator for his kind words. We are making progress. I know we are going to come out with a good bill. I look forward to working with him.

Today we begin the third week of debate on this very important legislation. The bill before us, the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005, better known as the highway bill, is important to the Nation.

Too many Americans are sitting in traffic. The Texas Transportation Institute, which ranks U.S. cities on the severity of their congestion, tells us in a recently released report that the average commuter in Atlanta sits in traffic for 67 hours each year; Washington, DC, for 69 hours; San Francisco, 72 hours; in Los Angeles, the average commuter sits in traffic for an astounding 93 hours each year. That is almost 4 days each year wasted while sitting behind the wheel in traffic.

I would hope we could move away from our reliance on cars and make better use of public transit, but the reality is the number of cars on the roads increases each year.

The bill before us will help cities in all of our States reduce congestion by adding additional travel lanes, by building overpasses at busy intersections, and using the best technology available to keep our traffic moving.

We need this bill to make our roads safer. More than 42,000 Americans will die in traffic accidents this year. The bill before us will help States make

dangerous intersections and curves safer by putting up better warning signs, by building guardrails, and by building center median dividers.

This bill will make our roads safer by helping States build wider shoulders for disabled vehicles, by building rumble strips to slow down traffic, and by building fences to discourage jaywalkers. This bill will save lives.

Once again, I thank the chairman, Senator INHOFE, Senator BOND, and Senator BAUCUS for all their efforts in moving this bill forward. And while I am glad we expect to pass this bill tomorrow through the Senate, I remind all of my Senate colleagues we still have a lot of work to do ahead.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, the Senator from Vermont brought up a very interesting point when he said this bill will save lives. We have a whole safety core in this bill. This was done in the Commerce Committee's portion of the bill. That is why when we have a very complicated formula, one of the factors in the formula is the fatality rate on a per-capita basis of the States because that is one indicator that there is a problem with surface transportation and a problem that can be corrected with this bill.

We had called this bill the SAFETEA bill because it has the safety provisions that will save lives. I can speak for my State of Oklahoma and many others that more than half the States are above this average in terms of fatalities. We need to do something about this. We cannot do it if we extend it.

I do not think people realize that if we do not pass this bill by tomorrow and get it to conference and back from conference prior to the termination of this sixth extension—and that is May 31—then we will have to get another extension. If we get another extension, we will be doing the same thing we have done over the last 2 years with extensions, and that is continue it as it was under the 7-year-old TEA-21. There have been a lot of changes since then.

All those Senators representing donor States, such as my State of Oklahoma—I can remember when Oklahoma would only get back 75 percent of what they sent in, and now we have made improvements. The bill passed 7 years ago, TEA-21, brought up the minimum to 90.5 percent. If we had passed the bill we had last year at a higher funding level, that would have been 95 percent.

In other words, every donor State or every State would get back 95 percent of what they sent in. That would be better than the 90.5 today. At this reduced funded level, it will be about 92 percent.

The point is this: If we do not pass a bill, it is not going to happen. We are not going to have any relief for the donor States. The safety core program Senator JEFFORDS talked about—he is right, it is a life-or-death issue. If we

do not pass this bill, people are going to die. People are going to die because we don't have any safety provisions in the extension so none of those would be adopted.

We have streamlining provisions. I think we all hear stories about how some of our antiquated rules, regulations, and statutes have made it almost impossible to get roads built and have made them cost something close to 15 percent more. We have streamlining provisions and reviews of this process in the bill, but if we don't pass the bill we will be operating under an extension, and that is not going to happen.

I mentioned earlier today this all started with President Eisenhower, actually Major Eisenhower, back in World War II when he realized he was unable to move troops and equipment around the United States to prosecute World War II as well as he should have been able to. So when he became President, he decided to have this National Highway System and we passed this bill. We have been operating the same way since then, almost 50 years now, raising money to pay for our infrastructure in America the same as we did 50 years ago.

We have done two things. First, we are giving the States the ability to be creative. I know a lot of people think no decision is a good decision if it is made in Washington. I have learned, after having been in State government and mayor of a city, that the closer you get to the people, the better the decision is and the more accurate it is. We recognize this. We allow the States not just to do things in general but also to come up with creative funding mechanisms, where they exercise the maximum of the private sector involvement in order to get these problems resolved.

In this bill we hope to pass, we even have a national commission to explore how to fund transportation in the future. This is something that will not happen if it is an extension. So we need to have this. That is why it is important.

We have the Safe Routes to School provision. I could probably name 20 different provisions of this very large bill, but this is one that several Members had a great passion for. I know several Members in the other body, as well as Senator JEFFORDS, were concerned about the Safe Routes to School provision. This is something that will save young people's lives, but if we do not do it and instead operate under an extension, we will not have that provision in there.

Anyone who has been in business and who has watched and waited, knows what you have to go through to get contracts, how you plan the financing, and that when you get the labor pool and your resources, in order to get the very most from them, you have to plan years in advance. The problem with the extension is it could be a 2-month extension or a 1-month extension or it

could be 6 months. They are out there trying to address serious problems such as we have in Oklahoma with our bridges.

By the way, we have had several losses of life in my State of Oklahoma—two in the fairly recent past—due to bridges crumbling and killing people. So we need to correct this problem. We cannot do it unless we pass the bill.

A lot of the States are complaining right now, the border States—California, Arizona, Florida, Texas—about the fact that, because of NAFTA, a lot of excess traffic is going through their States. We want to do something about that and we are doing it. We have a borders provision in this bill that gives them some of that relief. We will not be able to do that if we do not pass the bill. It is not going to work with an extension.

Right now we have chokepoints such as the canals we have in Oklahoma. People do not realize they are navigable. I remember many years ago when I was in the State senate, in order to try to get the point across to people that we have a navigable channel that goes all the way to my hometown of Tulsa, OK, or Catoosa, and in order to show this we managed to take a World War II submarine, the USS *Batfish*, from Texas, in the boneyard, and moved it all the way to Oklahoma, and it is sitting in Muskogee to tell that story.

The point is, if we have channel traffic activity, we have railroads, we have air, and we have surface, this provides chokepoints. We address the chokepoints as a major part of this bill.

The last and maybe most important thing is we have firewalls. When a person goes to the pump and pays Federal excise taxes when they buy a gallon of fuel, that person expects that money will go to improving highways and go to transportation. That is a no-brainer. That is what is supposed to happen. That is what we told the people is going to happen. But that is not what is happening. The insatiable appetite of members of an elected body to spend somebody else's money is something we have to deal with on a regular basis. So we have a trust fund and people pay money into the trust fund, but every time they have a chance to steal money out of the trust fund, they do.

What the Finance Committee tried to do, and I applaud them, they have put this together so they cannot do this that easily. For example, someone was complaining about the way this finance package is working. They said we have this program where we have hybrid cars so we give them financial advantages to encourage them so we can look out for the environment and save money on fuel and not aggravate the already existing energy shortage problem we have in America.

What do they do? They give them that money. But they take it out of the trust fund. It has nothing to do with



that. This is environmental policy, economic policy, but it is paid for by the trust fund. This is wrong.

In 1998, when President Clinton was President, he had a balanced budget amendment. He was going to balance the budget. But a lot of that money, \$8 billion, was out of the trust fund to go toward the deficit. At that time I voted against it. All my conservative friends said, You want to do something about the deficit, don't you? But I said, Not on the back of the highway trust fund.

The point I want to make is there have been raids on the trust fund, and not just the highway trust fund but others. In this legislation we hope to pass tomorrow, we have firewalls built in so they can no longer raid the highway trust fund. If there is no other reason to pass this bill, this would be enough of a reason.

There will have been some complaints concerning our approach. There are two different basic approaches that one might take, putting together something such as the allocation of money that goes to the States. One is used in the other body. I served 8 years on the Transportation Committee in the House of Representatives. I know how that works over there. Frankly, it is more on projects than anything else. Not that there is anything wrong with that, except it would seem to me, and it seems to the majority of people in this body, better if you allocate on formula an amount of money then that goes back to the States and those States determine how to use it. In the State of Oklahoma we have eight transport districts, eight transportation commissioners. They sit down in a room. Certainly they know more about the needs in Oklahoma than we know here in Washington, DC. So we allocate the money in accordance with a lot of factors.

We have low-income States as a factor. If you are in a State such as Wyoming or Montana that has a low population density, yet you have to have roads to get across it, that is a consideration. If you have a high fatality rate, as we mentioned before, that is a consideration. We want to consider the number of interstate lane miles they have, the age of those, the traffic on those—all these things are factors that are in a formula. It might be politically a lot smarter to line up 60 Senators and say this is what we are going to do in your States and forget about all the rest of them and just do projects. We could do them. It is perfectly legal. We elected not to do that. We elected to do it the hard way with a complicated formula, and by the way, that is one nobody likes and that is probably a pretty good indication it is a pretty good formula. There are things I don't like. There are areas where I don't believe Oklahoma is being treated fairly. I am sure every one of the 100 Senators in this body can say the same thing.

We are still waiting now. We will be having a vote. We are 2 hours away

from the vote. So we will wait for those to come down.

AMENDMENT NO. 706 TO AMENDMENT NO. 605

On behalf of Senator SNOWE, I ask unanimous consent to set aside the pending amendment and call up amendment 706.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The bill clerk read as follows:

The Senator from Oklahoma [Mr. INHOFE], for Ms. SNOWE, proposes an amendment numbered 706 to amendment No. 605.

Mr. INHOFE. I ask unanimous consent the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To specify which portions of Interstate Routes 95, 195, 295, and 395 in the State of Maine are subject to certain vehicle weight limitations)

On page 410, between lines 7 and 8, insert the following:

**SEC. 18. VEHICLE WEIGHT LIMITATIONS IN MAINE.**

Section 127(a) of title 23, United States Code, is amended in the last sentence by striking "respect to that portion" and all that follows through "New Hampshire State line," and inserting "respect to Interstate Routes 95, 195, 295, and 395 in the State of Maine,".

Mr. INHOFE. Mr. President, I observe Senator SNOWE is en route and unless someone else wants to gain access to the floor, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll. The bill clerk proceeded to call the roll.

Mr. WYDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WYDEN. I ask unanimous consent to speak for 10 minutes.

Mr. INHOFE. Let me reserve the right to object and ask the Senator if he would amend his unanimous consent to speak for up to 10 minutes as in morning business. However, if a Member comes with an amendment—since the cutoff is 25 minutes away—the Senator agrees not to speak for more than a couple of minutes.

Mr. WYDEN. I very much appreciate the work of the Senators from Vermont and Oklahoma, and if we have a Senator, I will wrap up within a couple minutes of time at that point.

The PRESIDING OFFICER. Without objection, it is so ordered.

**DISCLOSURE OF CEO PENSION FUNDS**

Mr. WYDEN. Mr. President, this is a time when millions of our families are walking on an economic tightrope. I will talk for a couple of minutes about the double standard that applies with respect to the pension rights of our workers. When we look at what is happening today in America with the workers—for example, at United Airlines, we saw it at Enron, as well—the pensions of our workers are in a free

fall, but the pensions of the executives, the CEOs, are safe and secure in a tidy lockbox. I don't think that is right.

As a member of the Senate Finance Committee, I will do everything I can to change it. I have been trying to figure out exactly how much money the CEO of any major company is receiving in this country in his or her pension package. This is a very difficult exercise. It is sort of like trying to find a needle in multiple haystacks.

To begin the effort to try to figure out what these executives are paid, I was first instructed to call the Department of Labor to obtain a copy of a company's annual report of employee benefit plans. This is what is called the form 5500. After I did that, I was told to contact the U.S. Securities and Exchange Commission to get hold of the company's 10(k) filing for the year in question.

Armed with these two documents, you then have to figure out the amount of unfunded liability for all of the groups the company pays, and then subtract that number from a line item in the 10(k) form. Even when you go this route, what you have is, at best, a rough estimate that requires a background in pension legislation, an intimate knowledge of SEC requirements, and a degree in calculus.

It seems to me that American workers, at a time when they are seeing their pensions shellacked—we saw it at Enron in Oregon where we had workers who used to have close to \$1 million, and their private pension funds now have \$3,000 or \$4,000. They deserve better than to have to try to figure out, through a bevy of forms and stock options, deferred accounts, years of service calculations, equations—one form of paper after another—they deserve better than to try to have to sort all that out to see what the executives are making in their pensions while they are seeing their pensions evaporate in front of their eyes.

Senator KENNEDY has done very good work in terms of trying to sort this out so as to determine when a company tries to unload their responsibilities at a time of crisis.

The Senate Finance Committee, on a bipartisan basis, should do more. What the Senate ought to be doing at a time when we are seeing our workers suffer and their pensions disappear, the Senate ought to make sure that shareholders and the public can find out exactly and conveniently what these executives will be getting upon their retirement.

I am proposing a bit of sunshine come into these executive pension lockboxes. Let's do for the workers whose pensions are being offered up for the CEOs, a bit of justice. Let's also do it for taxpayers because with every company that the Pension Benefit Guaranty Corporation steps in to rescue, the agency's deficit grows. From an estimated \$23 billion today, it is anticipated to grow to an expected \$40 billion with the takeover of additional airlines.

We are seeing our workers sacrifice. The question is, What are they sacrificing for? Apparently, on the basis of the news in the last couple of weeks, some of these workers are sacrificing in order to fund the retirement packages for the CEOs. That is not my view of making tough decisions together. That is not my view of coming together and dealing with a tough problem in an equitable way. It is a double standard.

If you ask the average person on the street if they knew, for example, that the worker was going to be at risk with their pensions while the enormous pension of the CEO was protected, those workers wouldn't have any idea that was the case. They would say the same rules apply to everyone.

We are seeing they don't. Look particularly at the pension arrangement for the CEO at United. Three months before United Airlines filed for bankruptcy in 2002, the company placed \$4.5 million in a special bankruptcy protected trust for the CEO. So right now we are seeing the workers of United Airlines face the devastation of their pensions literally disappearing. They look at this double standard. The people at the top do not have to sweat it. That is not right. We ought to have one set of pension rules for everyone in this country. It ought to be based on disclosure and transparency.

As a member of the Senate Finance Committee I am going to do everything I can in this session, on a bipartisan basis, to get this passed.

I yield the floor.

Mr. JEFFORDS. Mr. President, I commend the Senator for his excellent statement. I offer to work with the Senator to see if we can bring about some action to take care of those problems.

I yield the floor.

Mr. INHOFE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. INHOFE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INHOFE. Mr. President, I ask unanimous consent, since we are right to the 4 o'clock deadline, that the managers' amendment proposed by myself and the ranking member be introduced at a time after 4 o'clock.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INHOFE. I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, there are many people to thank in what has been a long 3-year process.

First, Chairman INHOFE. It has been an honor and a privilege to work with the Senator from Oklahoma. He has always been fair and considerate, and I enjoy our friendship. We have a couple

weeks, possibly months, more to go to get this bill done. I look forward to working with him.

Senator BOND also has been wonderful to work with. He brings spirit, enthusiasm to all his work, and a lot of humor, and I appreciate our close working relationship. He is a good friend.

Senator BAUCUS, my colleague on this side, is a very close friend and has been a great addition to the team and this process. The Senator from Montana is a true legislator. He knows how to get things done. Without him, I don't think we would be as far as we are here today. It is an honor to work with such an intelligent and fair-minded Senator.

There are many staff to acknowledge, also. I have always told my staff director, Ken Connolly, that in order to succeed in his job, he needed to hire a strong team and to hire staff smarter than me and him. Well, in this case, it wasn't difficult. Anyway, let me run through a few staff members who have helped the cause of moving this bill.

Senator INHOFE's staff: Ruth VanMark, Andrew Wheeler, James O'Keefe, Nathan Richmond, Angie Giancarlo, Greg Murrill, John Shanahan, Marty Hall, and others; Senator BOND's staff: Ellen Stein, John Stoodly, Heideh Shahmoradi; Senator BAUCUS's staff: Kathy Ruffalo returned to the Senate just this past spring to help us complete this legislation. She has been a fantastic addition to that team.

On my staff, there are many people to thank, including JoEllen Darcy, Catharine Ransome, Margaret Wetherald, Chris Miller, and MaryFrancis Repko.

However, there are four key people who need to be acknowledged and thanked for bringing this bill to us today. Malia Somerville has been the glue that kept our team together; Alison Taylor, the best chief counsel of any committee in either body of Congress; J.C. Sandberg, the only staffer who really knows what is in the bill, and the hardest worker in the Senate; and Ken Connolly, my staff director, who has built such a good team. To him I owe a great deal for the work that has been done.

All of these staff members, I am sure, are looking forward to final passage tomorrow. They are even more eager, I am sure, to go to conference.

Mr. President, I yield the floor.

Mr. INHOFE. Mr. President, I also am going to thank staff. This was not easy. We have endured 3 years now. Ruth VanMark has been with me 18 years and has all of the background in the other body in the Transportation Committee. They will all be glad to get a good night's sleep at some time. We go from here into conference.

I suggest that we be aware that our 4 o'clock deadline has passed now. We have exempted the managers' amendment so it can be done at a later time. We are now down from 173 amendments

to 7, so we have 7 to be voted on between now and tomorrow. At the conclusion of that, we will then vote on final passage and send it to conference. I hope leadership is working on both sides of the aisle to appointing conferees and that we can get it to conference and get it back.

I keep responding that I believe we can do this within the May 31 deadline and avoid an extension. We can show that things can happen in an expeditious way in the Senate, whether people believe it or not. If we get this passed tomorrow, we would have time to do it, if we are committed to making it a reality.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Texas, Mrs. HUTCHISON, is recognized.

Mrs. HUTCHISON. Mr. President, earlier this week, I offered an amendment, which was passed unanimously, to eliminate the ability to toll existing interstate highways. I did this because I believe in using our tax dollars that we collect to support the Federal interstate highway program. But we ought to do it fairly.

The majority of the highway system was designed in the 1950s to meet the needs of the westward expansion of a rapidly growing nation. Today, we face different needs. For example, new areas of population growth, especially along the southern tier, require new infrastructure, and also with the trade coming from NAFTA, we are seeing an even more increasing load that adds to the transportation burdens of our border regions.

Strong trade partnerships with Mexico and Canada have provided great benefits for us, but the resulting traffic is damaging the highway network in my State and others, such as Arizona and Michigan.

Most of the goods in our economy ride on our Nation's highways. In large part, over the past 50 years, the Federal highway aid program has assisted the States in producing one of the world's finest highway networks.

To meet our needs, Congress must reauthorize surface transportation programs this year. States are responsible for converting the resources this legislation provides into infrastructure that allows traffic to move efficiently, and we want and need to undertake that construction.

My major concern with the Federal highway program is that Texas has been a donor State for 50 years, contributing billions to other States to enable them to build their highway network. As a strong adherent of a National Transportation Safety Board system, I understand that large States, such as Texas, should assist smaller and rural States with their transportation needs because we all profit from the comprehensive highway network. What concerns me is the level of support Texas has been forced to provide to other States.

In the late 1980s and early 1990s, Texas and other donor States received

as little as 76-percent rate of return on what our taxpayers send to Washington. With the 1998 bill, TEA-21, Texas's rate of return rose to 90.5 percent in the formula program.

This program produced real dollars. From 1994 to 2003, Texas contributed \$20 billion to the highway trust fund and received \$18 billion in return. If not for other donor State Senators, such as the chairman of the committee, the Senator from Oklahoma, and improving the rate of return, Texas would have received only \$15.8 billion. The additional \$2.4 billion has been critical for us to meet our transportation needs. However, Texas has still given \$2 billion to other States over this period.

States such as Texas, California, Arizona, Colorado, and Michigan are contributing more and more, and we are the States that need the most new infrastructure to handle the greatest population growth. In addition, most of the donor States are border States with unique needs resulting from trade.

Texas has more than 300,000 highway miles, the most of any State in our Nation. Texas highways are almost 10 percent of the national total. Eighty percent of NAFTA traffic travels through my home State of Texas. But while the entire Nation benefits from the resulting commerce, Texas bears the brunt of maintenance and upkeep on our highways.

In 2003, more than 4 million trucks, hauling 18 billion pounds of cargo, entered from Mexico through 24 commercial border-crossing facilities. More than 3 million of those trucks, or 68 percent, entered through Texas. In addition, 90 million personal vehicles from Mexico also travel through the southwest border States.

The donor States are the fastest growing States in America and are most responsible for the growth in the highway trust fund. Ironically, the formula in this bill offers the least relief to the States where cities are developing most rapidly.

In 1998, Texas accounted for 7 percent of the highway trust fund receipts. In 2004, it rose to 9 percent, and during this bill, it may top 10 percent. In other words, we are paying a larger and larger share.

The formula in the bill reported out of committee created a floor guaranteeing every State at least 110 percent of the total cash it received under TEA-21. To limit costs, no State may receive more than a certain percentage, 130 percent in year 1, of the TEA-21.

So even if a State's contribution to the trust fund grows in excess of 130 percent, it hits the ceiling and it hits pretty fast on growing States such as Texas, capping our funding.

Using cash as the measuring stick rather than the percentage a State contributes to the trust fund ignores whether a State is growing or shrinking, and it ignores whether it is giving more to the fund or less. This methodology hurts our growing States, and it

helps the donee States which are contributing less to the trust fund.

For example, Pennsylvania's share of contributions during TEA-21 was 4.1 percent, but it is expected to contribute just 3.9 percent of the trust fund during SAFETEA. It does not make sense to guarantee an increase in cash when a State is contributing less.

The formula in the pending substitute is made worse. Not only does it increase spending for the bill by \$11 billion, it increases the floor to 115 percent. So Pennsylvania is now guaranteed to receive 15 percent more cash than it received from Washington in 1998, even though it is contributing a smaller proportion of the trust fund. Superdonor States, such as Texas, move up to an average return of only 91.3 percent.

While this is an improvement, it is not enough. The committee tells me I should like this legislation because while total spending grows 30 percent, Texas will see a 37-percent dollar increase compared to 6 years ago. However, Texas's increase has little to do with the formula and instead is the result of Texas buying more gas and paying more taxes into the highway trust fund.

It is fair, if a State's contribution is growing faster than the average, that it should receive higher than the average in return. This bill does not give Texas the resources to adequately expand our infrastructure at the rate the traffic is growing on the NAFTA corridor of Mexico and around our fast-growing cities. If Texas received all of the money that we contribute to the fund, this disparity would be reduced.

I believe the ability to pay for highway project needs with their own contribution exists for most States, with very few exceptions, particularly in the West, and funding increases should be based on growth and need rather than tradition.

I am not suggesting that we cut off aid to other States altogether, but I do think we can reduce this disparity in the current donor-donee system. It has been too large for too long and unfairly limits the ability of States to benefit from their tax dollars.

We all want the Federal highway system to be good throughout our Nation, and that may require some donor status, but donating almost 10 cents of every dollar is not necessary, and it is not fair.

I recognize the needs of donee States vary widely, but we have never before created this special class of donor State to carry the heavier load, and I hope we will not do it when this bill is finished.

At a minimum, we should all receive at least 92 percent in year 1 rather than having to wait until the final year to get to that level.

I have worked with the chairman for a long time trying to come up with a formula that would help mitigate the border States' particular needs because we are border corridors and most of us

are growing States. I have come up with a lot of alternatives. None of them have been acceptable to the chairman and the ranking member of the committee.

It is my hope that as this bill goes out of the Senate, which it will, we will be able to work in conference for some more fair allocation that is based on a State's needs, a State's taxing, and a State's efforts. It is only fair that the States that are growing, that are putting more money into the highway trust fund should get some bonus for doing that to help them with the needs they have.

I think we have gone in the wrong direction, and I certainly hope we will come much closer to a fair allocation. I am not saying there should be 100 percent, but 91.3 percent is a mighty price for Texans to pay when it is growing at such a fast rate and has the most highway miles of any State in our Nation.

I look forward to working with the chairman and the ranking member as this bill does sail out of here. I cannot possibly support it in this current configuration. I still hold out hope that if we can come up to the 92-cent level, we would be in a much better position to feel good about this legislation, helping all of our States instead of just the donee States. And I hope the door will still be open to helping all of the States feel good about this effort.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, I thank the senior Senator from Texas for her comments. I know the depth of her interest and the passion she has for doing everything she can for her State.

I have said several times on the floor of the Senate how difficult it is to come up with formula approaches. It is difficult. It is a tough thing to do. There are so many factors that go into it, such as the interstate lane miles, miles traveled, principal arteries, cost to repair and replace deficient highway bridges, weight nonattainment maintenance areas, low-population States, donor States, donee States, fast-growing States. Again, it would have been so much easier to do it the way it has been done before and the way we have done it, actually, in the other body just by making a political list, and when we get to the 60 votes saying: All right, that is it, the other 40 of you guys, it is your problem.

We try not to do that. There is not one State represented in this Senate that cannot complain about some parts of the formula. We have tried hard. When we passed the bill out of committee, starting in 2005 through 2009 in Texas, 90.5 percent was all the way to 2009, and then it was 92 percent. Now in 2006, 2007, 2008 at 91 percent and going to 92 percent.

Of course, the Senator is right that Texas is a very large State, so it represents very large amounts of money. But it is a half percent more in each of those 3 years of 2006, 2007, 2008. We have

tried to do it. We tried to work with each one of the States.

As I say, I know her depth of interest. We spent many hours trying to work out variances.

The problem we always have is nothing happens in a vacuum. If we take care of a problem in Texas, then that aggravates a problem in Pennsylvania.

So formulas are tough. They are tough to deal with politically. They are tough to deal with rationally. I think we have tried to do the very best we can. With that, I am glad to yield the floor.

Mrs. HUTCHISON. Mr. President, if the Senator will yield, I do understand exactly what has happened to the bill. I do understand the difficulty. The Senator is responsible for getting the number of votes he has to have to get the bill out of the Senate, and my colleague has those votes.

I do hope, in conference, he will look at the border corridor issue which, when the bill came out of committee, was above the line, outside the formula, and did give some of the help to these fast-growing border States that have the NAFTA traffic coming in directly, which then fans out to the rest of the country where it is dissipated. I hope my colleague will take that into account.

I was the one who authored the border corridor idea. It really did help when it was, as we discussed, above the line. I just hope, as you do fix particular problems for other States—whether they be pass-through States or other types of designations—you will look at the border corridor issue, which would help both northern corridor States such as Michigan and southern border States such as California, Arizona, and Texas. It is still going to make us very big donor States, but it would mitigate it, to a great extent, because that is where our biggest problem is. We have three border corridors and two of them are clogged completely, all the way through Texas. That is not helpful to anyone.

I don't want to toll a highway that is already in place. We have spoken on that. But I think we need to try to look at that issue in conference—if you can do something that would mitigate that particular problem.

Mr. INHOFE. It is a very reasonable request the Senator from Texas is making. I observe we talked about this "above the line/below the line." We plowed this furrow several times. However, when you get in conference, there are things that can be done. I can assure the Senator the State of Texas will be well represented in conference. I am sure we will hear proposals, and there will be some give and take in all areas.

Of course, we will be dealing with another whole body over there, so it is hard to predict what will come out. But we will try to get to it expeditiously and see that Texas—as I say, they will be well represented. I think we all understand that.

We are now waiting. We are, as I said before, down to about seven amendments. There could be a germaneness problem with some of them. Some of them could be worked out. My guess is, other than the managers' amendment, which Senator JEFFORDS and I will be propounding, there are probably, realistically, maybe four votes that we will be having. That is my guess what it will be. We have announced already we are going to have one tonight at 5:30, which is just an hour and 6 minutes from now.

After that, we invite Senators to stay here and debate their amendments. I think we probably will not have votes until tomorrow morning. We can debate these amendments. I think by that time there may be as many as three or four amendments that would be appropriate for us to debate. Then we can get on to the final passage.

As it is right now, we have plenty of time tonight. We have another hour and 5 minutes before the vote. I am sure Senator JEFFORDS joins me in making this request: Members who are authors of these amendments, they know who they are, come down. We are open for business. Come down and debate your amendments.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. INHOFE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INHOFE. Mr. President I will briefly talk about a provision in the Commerce title of the highway bill. We have the Commerce title, Banking, Finance, and EPW title. Section 7370 creates a hazardous material cooperative research program. It authorizes \$2 million a year for each year, including 2006 through 2009, for hazardous material transport research projects on topics that are "not adequately addressed by existing Federal private sector research programs."

The section goes on to require that at least one of the studies "provide an assessment of the need and feasibility of substituting less lethal substances than toxic inhalation hazards in the manufacturing process."

I oppose the provision and hope it can be removed in conference. I will be actively opposing it in conference to see it is removed. There is no such language in the House portion.

The concept at the heart of this provision is called inherently safer technology and it is not about transportation but a longstanding wish of some of the environmental extremist communities. The EPW has spent the last 4 years working on the issue of chemical security and this issue of FIST has arisen several times in the context of the security debate. The idea of inherently safer technology predates September 11. It was around long before

the tragedy of September 11. It has never been about security. It has never been about transportation. It is a concept that dates back more than a decade when the extremist environmental community—Greenpeace and others—was seeking bans on chlorine, the chemical used to purify our Nation's water. After September 11 they decided to play upon the fears of the Nation and repackage FIST as a solution to potential security problems. Now they seek to repackage it again as a transportation issue, which it is not.

This issue is not about security. It is not about transportation. It is about trying to find a research justification for giving the Federal Government authority to mandate that a private company change its manufacturing process or the chemicals they use. The study's parameters reveal this intent when it states "substituting less lethal substances than toxic inhalation hazards in the manufacturing process."

There are entire books written about the subject of FIST by various groups, including current efforts by the Center for Chemical Process Safety and the American Institute of Chemical Engineers to update their 1996 "gold book" on the subject. These are chemical process experts. The Federal Government is not.

I do not believe mandatory FIST is good for our Nation's security. Besides that, it is not a transportation issue. If it is something you want to debate in the Senate as a freestanding bill, do it that way, but do not sneak around behind and throw little a part into this bill through the Commerce title that has nothing to do with transportation.

I mention this and anything else we find in the bill that perhaps we have overlooked that has nothing to do with transportation, we will make every effort to make sure it gets out when it is in conference.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCHUMER. Mr. President, I will speak on another subject, but as per an agreement with the Senator from Oklahoma, should someone else come to the Senate floor and wish to speak on the subject of the bill at hand, I will yield the floor.

#### NUCLEAR OPTION

Mr. President, I will change the subject to the subject on everyone's mind other than the transportation bill, probably more on our minds than just about anything else, and that is the upcoming nuclear option. Right now, we are on the precipice of a constitutional crisis. We are about to step into the abyss. I want to talk for a few minutes why we are on that precipice and why we are looking into the abyss.

Let me first ask a fundamental question: What is the crisis that calls for the undoing of two centuries of tradition? What is the crisis that requires such an unprecedented parliamentary sleight of hand? What is the crisis that calls for a response that is so controversial and extreme that Senator LOTT coined the term "nuclear option" to describe it?

Is it that President Bush has had the terrible misfortune of having only 95 percent of his judicial nominees confirmed? That is, 208 out of 218? It can't be that. Every President should have the luck of George Bush and have so many nominees confirmed to the bench. I might also add, in part because of this high confirmation rate, court vacancies at the end of last session were at their lowest rate in 14 years. So it can't be either vacancies on the bench or overwhelming rejection of the President's nominees because neither is the fact.

Is it that the Constitution, as my strict constructionist friends across the aisle like to argue, requires an up-or-down vote on every judicial nominee? Is that the crisis? No, Senator FRIST acknowledged as much last week when he conceded, after a question from Senator BYRD, that there was no such language in the Constitution.

In fact, it is a great irony that those on the other side of the aisle who are seeking this nuclear option in the name of strict construction are being activists, as they call it, because they are expanding the Constitution, reading in their own views in the Constitution when the very words do not exist.

It is my understanding that is what the Constitution-in-exile school holds; that is, what the strict constructive school of Justice Scalia holds. If the words are not in the Constitution, you do not read them in.

Is the word "filibuster" in the Constitution? No. Are the words "majority vote," "up-or-down vote" in the Constitution? Absolutely not. That is not the crisis, either.

Let me ask again, Why are we on the brink of destroying what is good in the Senate and destroying whatever is left of good will in the Senate? Is it that the public, in high dudgeon, is demanding this radical rule change? Are Republican Senators merely doing their jobs as legislators, responding to a generalized public calling for the abolition of the filibuster? Clearly not.

It is not the American people at large who are demanding detonation of the nuclear option. Indeed, in poll after poll, first, people say they do not know what it is when asked, and then when it is described to them, the people have made clear they believe the filibuster is an important check and balance to be preserved, not vaporized. Most recently, for instance, according to a Time magazine poll, the American people are against the nuclear option 59 to 28.

Nor is it rank-and-file Republicans who are clamoring for an end to filibus-

ters on judges. A Wall Street Journal poll showed 41 percent of Republicans support giving the Democrats the right to keep the filibuster going. They, like most Americans, are wondering, and rightly so, why we are talking more about the nuclear option in the Senate than about nuclear proliferation in North Korea.

Nor is it the business establishment—clearly, usually, a conservative constituency—that is calling for a change in the rules. To the contrary, the business community wants the Senate to get busy addressing important issues they believe will get the economy back on track. The Chamber of Commerce and many other business groups have either publicly or privately stated their opposition to invoking the nuclear option.

Is it the "gray heads" of the conservative movement who are calling for this? No. By and large, elder statesmen from the conservative movement are not demanding this radical move. Many, including such leading figures as George Will and Ken Starr, have criticized the nuclear option and urge restraint—so have Senators Armstrong and McClure, hardly beacons of a liberal influence in this country or in the Senate.

So if there is no constitutional requirement, and there is no vacancy disaster, and there is no public clamoring for the extinguishing of the minority rights to filibuster, why are we here? Why are we on the edge of the abyss? Why are we—at least the majority—being motivated to plunge this Senate, this city, and this country into a constitutional crisis, into an end of what is ever left of comity in the Senate, which is the body that has at least some comity left?

Well, let me tell you why I fear we are here. We are here, I fear, because the nuclear option is being pushed largely by the radioactive rhetoric of a small band of radicals who hold in their hands the political fortunes of the President and a minority of sitting Senators who would be President. The once conservative Republican Party has, I believe, been hijacked by activist, radical, rightwing ideologues who are exerting too much influence over Senators.

These ideologues have taken to intimidating and even threatening the independent judiciary. They have, among other things, compared judges to the KKK and claimed that the independent judiciary is worse than al-Qaida. Unfortunately, these extreme groups are exerting disproportionate influence on certain Senators from the other side who—because of pure political pressure—are proceeding at pace with the nuclear option.

There is, to be sure, much irony and hypocrisy in this dance. It is particularly perverse that many of my colleagues purport to preserve the principle of majority rule by doing the bidding of a distinct, but politically powerful, minority.

Mr. VITTER. Will the Senator yield?

Mr. SCHUMER. I would like to finish my remarks, and then I would be happy to yield to my colleague.

Mr. VITTER. OK, but I say to the Senator, I understood you had been given the floor until someone came to the floor to speak on the highway bill. About how much longer?

Mr. SCHUMER. I probably will need no more than 5 minutes, if that is OK with my colleague.

Mr. VITTER. OK, that will be fine.

Mr. SCHUMER. I thank the Senator. I appreciate that very much.

It seems the only conservatives who are strongly in favor of the nuclear option—who are pushing it—are some Senators who might wish to run for President.

Now, to hear the tirades of those demanding the nuclear option is spine tingling.

Conservative activist James Dobson compared the nine Supreme Court Justices to the Ku Klux Klan's men in robes.

Pat Robertson said the threat posed by judges was "more serious than a few bearded terrorists who fly into buildings."

Conservative lawyer-author Edwin Vieira said Justice Kennedy should be impeached and invoked Joseph Stalin's murderous slogan, which he said worked very well for him:

[W]henver he ran into difficulty: "no man, no problem."

Do we hear any denunciation of this inflammatory rhetoric? No. Denunciations of heinous characterizations of independent judges? No.

Instead, Senators—some maybe with Presidential ambitions—are kowtowing to these extremists. When the Democratic Party kowtowed to extremists on the left, we paid the price. It is a lesson I think we have learned. It is a lesson that ought to be learned by my colleagues on the other side.

Now, let's try to examine the record. And this is the No. 1 point I want to make. Look what conservatives are saying, conservatives not running for President or running for office, but people whose conservative credentials go unchallenged. These are not moderates. These are not liberals. They are true conservatives, and a chorus of their voices is speaking out against the nuclear option.

True conservatives, independent thinkers who are not under pressure from the likes of Tony Perkins and Pat Robertson and others, have eloquently made the case against the nuclear option. These conservatives have two things in common: They were strongly in favor of George Bush for President, and they are strongly against the nuclear option.

Here are some of the names. Many leading conservative commentators and thinkers are against it, such as George Will and Kenneth Starr. Many former Republican Senators are against it, such as Senator Armstrong, Senator McClure, Senator Wallop, Senator Simpson. Many editorial boards

that endorsed George Bush for President are against it—the Dallas Morning News.

I recognize that in these polarized times maybe the words of a Democratic Senator from New York will have little sway across the aisle, but what about the words of some icons and leaders of the conservative movement?

I urge my colleagues who have not yet made up their minds and been committed to the nuclear option to heed these words. Most of those who have not made up their minds are far more moderate than the voices that we listened to here, but they should be listened to in this instance. It is rare that you get so many conservatives—not in office, not under the thumb of these extreme, small-numbered groups—but rarely do you get such a chorus.

Here are the arguments of the conservatives. The conservatives understand that destroying an important tradition of the Senate is not conservative. Conservatism has a long tradition in American politics. I agree with some of its tenets and disagree with many others. But true advocates and students of that tradition recognize better than anyone the violence that the nuclear option does to conservative principles.

Ken Starr said in one leading magazine:

It may prove to have the kind of long-term boomerang effect, damage on the institution of the Senate, that thoughtful Senators may come to regret.

How about former Senator Armstrong? He said this:

Having served in the majority and in the minority, I know that it's worthwhile to have the minority empowered. As a conservative, I think there is value to having a constraint on the majority.

Let me repeat that: "As a conservative, I think there is value to having a constraint on the majority."

Jim McClure and Malcolm Wallop:

It is disheartening to think that those entrusted with the Senate's history and future would consider damaging it in this manner.

Second, these conservatives realize that the Constitution, even in expansive reading, let alone strict constructionism, does not support the nuclear option.

In advocating for the nuclear option, Republicans in the Senate have abandoned conservative principles for convenient propaganda. In doing so, however, they are committing a level of intellectual hypocrisy that we have not seen since Bush v. Gore. To make sure that strict constructionist judges are placed on the bench, the nuclear advocates are reading the Constitution so broadly and elastically that it would make the most activist judge cringe. Do not take my word for it.

Mr. President, I know my colleague is getting ready to speak, and I am almost finished. I appreciate his indulgence.

Here is what George Will said:

Some conservatives say the Constitution's framers "knew what supermajorities they

wanted"—the Constitution requires various supermajorities, for ratifying treaties, impeachment convictions, etc.; therefore, other supermajority rules are unconstitutional.

These are the words of George Will, not CHUCK SCHUMER.

But it stands conservatism on its head to argue that what the Constitution does not mandate is not permitted.

Some conservatives say there is a "constitutional right" to have an up-or-down vote on nominees. But in whom does this right inhere: The nominees, the President? This is a perverse contention, coming from conservatives eager to confirm judges who will stop the promiscuous discovery by courts of spurious constitutional rights.

That is George Will, not CHUCK SCHUMER.

Here is what Stephen Moore, founder of the arch conservative Club for Growth says:

Eviscerating the Constitution would violate the spirit of the Constitution and endanger our rights as individuals against excessive governmental power.

These conservatives also understand that no party lasts forever in the majority and the nuclear option may come back to haunt Republicans. For short-term political gain, Republican Senators are willing to trash a tradition that will hurt themselves in the long run.

Former Senator Simpson recognizes this:

[T]here isn't a question in my mind that when the Republicans go out of power and they, they're looking for protection of minority rights, they're going to be alarmed and saddened.

Finally, the conservatives also understand that once triggered, there will be no stopping the continued erosion of the filibuster. The legislative filibuster is also at great risk. Listen to former Senators McClure and Wallop:

It is naive to think what is done to the judicial filibuster will not be done to its legislative counterpart, whether by a majority leader named Reid, or Clinton, or Kennedy.

Here is David Hoppe, former chief of staff to Senator LOTT:

That's the problem with the nuclear option, because it will not stop there. The next step when somebody needs it will be to get rid of the filibuster on legislative issues.

In conclusion, we are here. We are at a defining moment in the world's greatest deliberative body. Now, this week, in the next few weeks, will enough of my colleagues across the aisle act with courage and conviction? Will enough of them resist the extremist entreaties of a tiny but vocal minority who only want their way 100 percent of the time, not 99, not 98, not 97? Will enough of them pay heed to the arguments made by independent conservatives of their own party, whether it is George Will or Bill Armstrong or Ken Starr or so many of the others I mentioned?

Time is running out. Time is running out.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. Mr. President, now that time has run out, I am excited to be

here to talk about the highway bill, important work of the American people that we must get done this week. I am here to stand in strong support of H.R. 3, the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005.

Last year, I traveled Louisiana extensively, campaigning all around the State. I heard concerns expressed in every part of the State about the importance of making sure that we in Louisiana get our fair share of Federal highway funding. In the past, Louisiana was a donor State, which means our State's taxpayers contributed more in gas tax revenue than they got back from the Treasury in highway moneys. As one of the newest members of the Environment and Public Works Committee, I worked hard this year to ensure that we try to change this unfair state of affairs. So Louisiana's rate of return will substantially increase under the bill before us from about 90.5 cents for every dollar that we send in Louisiana taxpayer money to the Federal Government to 95 cents on the dollar. That is a huge jump. It is still not a dollar—we need to go further—but it is a dramatic improvement.

This increase will provide my State with \$2.9 billion over the next 5 years, funding that is critical to ensure that work continues on one of my State's major corridors, I-49, as well as many other Louisiana highway projects.

Providing additional funding for I-49 has been a goal of mine since my days in the House of Representatives. Upon assuming my seat in the Senate this January, I have continued to fight for those additional I-49 dollars. That is why I initiated a letter in February to Chairman INHOFE and Ranking Member JEFFORDS calling for them to support a significant level of funding for the corridor improvement program in the highway reauthorization bill. That letter was cosigned by five colleagues.

As a member of the committee that produced that bill, I am also pleased that we were able to agree on language that would redress a serious transportation and safety issue for my State. You see, Louisiana is the 22nd most populous State, yet it ranks third in the Nation in the number of collisions at highway-railroad crossings and fifth in the Nation in the number of railroad fatalities.

Along the 3,000 miles of tracks in Louisiana are over 6,000 rail crossings, more than any other State except Illinois. So the bill we crafted would provide \$178 million for the elimination of hazards and the installation of protective devices at railroad highway crossings.

I wanted to take this opportunity to thank my colleagues, in particular those on the Environment and Public Works Committee, for agreeing to the inclusion in the highway bill of three significant amendments that I offered. I thank Chairman INHOFE for his work on behalf of these amendments.

One of the amendments would ensure that emergency evacuation routes are



emphasized as a program priority under the Multistate Corridor Program. The second amendment I authored would channel additional dollars to hurricane evacuation routes under the Federal Infrastructure Performance and Maintenance Program. And the third will help local officials complete much faster, and at much lower cost locally, a highway project connecting the parishes of Houma and Thibodaux, LA. The inclusion of these amendments in the managers' amendment will greatly benefit Louisiana and other coastal States across the country that experience frequent hurricanes.

As noted in the Times Picayune and other Louisiana newspapers, the 2004 evacuation of Louisiana due to Hurricane Ivan was disturbingly slow and marked by traffic gridlock. Traffic was backed up for 26 hours in Baton Rouge and 14 hours in New Orleans, while nearly 4,500 cars per hour were crossing the Mississippi River on I-10 at the peak of evacuation. Two of my amendments will provide additional funding for evacuation routes such as I-49, La. 1, and La. 3127 during hurricanes or other emergencies. Providing Federal resources to upgrade and maintain evacuation routes throughout the State will certainly help avoid the astounding gridlock and danger that occurred during the evacuation of Hurricane Ivan.

The third amendment I offered will expand the scope of an existing Federal highway project without increasing the cost-share burden on the local community and State. Without my amendment, the areas of Houma and Thibodaux, LA, would have had to come up with as much as \$5 million more money. This transportation project will establish a new north-south evacuation route that is vitally important to residents of Houma and Thibodaux and all of those areas in southeast Louisiana.

I thank, again, the full EPW Committee, the chairman, Mr. INHOFE, the ranking member, Mr. JEFFORDS, the subcommittee chairman and the subcommittee ranking member and all of the staff who have assisted on this bill, particularly Andrew Wheeler and Ruth Van Mark. I call on my colleagues to support the chairman and ranking member in their efforts to shepherd this bill through the Senate and through important conference committee negotiations.

Congress has been extending funding for Federal aid to highway programs six times. The current extension is set to expire on May 31 this year, a little over 2 weeks away. We need to pass this bill. Then we need to quickly go to conference with the House and resolve our differences with the other Chamber before that important May 31 deadline.

That is when the current extension expires and funding for Federal aid to highway programs will run out. I know that is a tall order, but all of our States' transportation needs, our Na-

tion's transportation needs cannot wait any longer.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, the Senator from Louisiana is being modest because he has had a great deal of influence on the amendments. A critical problem in Louisiana is beach erosion. He has persuaded our committee, in an articulate way, to become much more aggressive in solving that problem. We are a much better committee because of him. I thank him for his hard work on the committee.

It is my understanding the senior Senator from Massachusetts wishes to speak.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

#### JUDICIAL NOMINATIONS

Mr. KENNEDY. Mr. President, first, I commend my friend and colleague from New York, Senator SCHUMER. I was listening to him when he mentioned some of our former colleagues, all with whom I have served. He mentioned Senator Armstrong, and he also mentioned Senator McClure, and Senator Simpson, who was a good friend. I served with him on the Judiciary Committee. He mentioned Senator Durenberger. An excellent article was written by Senator Mathias last week. He mentioned Senator Wallop, and the list goes on. They are seven or eight members of the Senate who served in recent times and have a very good sense of the institution's importance, the importance of the powers of this institution and the relationship to the executive. They have a very keen awareness of the advice and consent role and understand this is a balance that both have responsibilities to fulfill. I think very deeply that Members of the Senate who have strong views on these nominees should not be muzzled, silenced, and they should not be gagged.

The point I might have missed from my friend from New York is the re-statement that 96 percent of this President's nominees have been approved. That is always something that causes constant amazement, I find, from people who call my office in Massachusetts inquiring about my position. They find out that 96 percent of the President's nominees have been approved and they wonder what this battle is all about. Then when you tell them this was not a battle the Members of the Senate were interested in, that it was as a result of the President sending back to the Senate those who have previously been rejected and indicated that they were going to add other individuals as well, such as the current general counsel of the Defense Department, Mr. Haynes, who was the architect of the whole torture and emasculation of the Geneva Conventions—these are individuals who are far outside of the mainstream of judicial thinking. I have had the chance to address many of these issues in the mark-

ups of the Judiciary Committee in recent times, particularly with regard to Mr. PRYOR, who is from the State of Alabama.

I took great pride in working with my colleague and friend from Iowa on the Americans with Disabilities Act. We spent a good deal of time negotiating that legislation. We had strong, bipartisan support at the very end. And then to read Bill Pryor's assessment of what that act said and his interpretation of it is completely antithetical to what the legislation was about, the language that was clear and explicit, and what the sense of the intent and the supporters of that legislation were about. The list goes on. So we welcome this debate.

I agree with the Senator from New York that this is a monumental decision. We are talking about changing the rules of the game in the middle of the game. Americans may not understand completely all of the parliamentary maneuvers here that are available in the Senate, but they understand when you have an agreed set of rules, you don't change them in the middle of the game, and I think they also understand that when Members have strong views and believe nominees who are going to have lifetime appointments to the Supreme Court—not 3½ years, such as this President has in the remainder of his term, but a lifetime commitment—those who have strong views ought to be able to speak to those views and have a right to be heard.

#### AMENDMENT NO. 674

Mr. KENNEDY. Mr. President, on another matter, I rise in strong support of Senator SCHUMER's amendment to raise the amount employers can give workers tax free for mass transit commuter costs from the current \$105 a month to \$200 a month.

In the face of high fuel costs and constant urban congestion, more commuters using mass transit makes increasingly good sense, and the tax benefit is an effective way to encourage it.

The current benefit of \$105 a month is too low to cover most mass transit costs in major metropolitan areas, and it is counter-productive that current law provides a benefit almost twice that size for parking—\$200 a month.

I have here a diagram that indicates the commuter fees for the different parts coming into Boston. Even from this distance, you can look at them. For Fitchburg, \$198; \$181 for Lowell; \$191 for Gloucester; and the list goes on. From the South Shore, \$198; from Stoughton, \$149; and \$198 from Worcester.

This amendment is good transportation policy and good environmental policy too. It is an energy policy that makes sense as workers see more and more of their paychecks go up in smoke at the gas pump. It is an energy policy that I hope we can all support.

In Massachusetts, the change will help nearly 200,000 commuters who purchase monthly T-passes to commute by bus, subway or commuter rail to work.

By increasing the commuter tax break to parity with the parking benefit—\$200 a month—the amendment will cover the cost of every monthly T-pass sold in Massachusetts.

The highest monthly T-pass cost from Worcester, Middleborough/Lakeville or Fitchburg is \$198, and would be covered in full, as would fares from Gloucester and Haverhill.

Commuters could have the full \$181 cost of commuting from Lawrence or Lowell covered or the \$149 cost from Brockton.

By raising the cap to \$200, the amendment will also encourage more new employers to participate in the program. They will be able to give an affordable benefit of much greater value to their employees.

And as more employers come into the program, we can cut down on gridlock in Boston and other urban areas across the country.

In Boston, gridlock cost the average commuter 51 extra hours a year. Congestion nationwide costs \$63 billion a year in wasted productivity and energy.

The amendment means more moms and dads will have more time to spend with their children, instead of being stuck in traffic. And more employees will get to work on time, meaning higher productivity.

We cannot afford to waste fuel like this anymore. Our dependence on foreign oil is a national crisis. The amendment will help save some of the 2.3 billion gallons of gas a year now being lost to unnecessary congestion. This amendment will mean clearer air in our cities and less wear and tear on our roads.

In so many ways, this is a smart amendment and a fair amendment, and I urge our colleagues to support it.

I yield the floor.

Mr. INHOFE. Mr. President, I would like to give a progress report. We are down to four or five amendments now. Many of them have been agreed to or have been withdrawn. We don't have anyone at this moment who is going to ask for a vote tonight. We had previously scheduled a vote at 5:30. We did not anticipate at that time that we would be getting the cooperation we are getting from the Members who have worked things out. So I announce on behalf of the leadership that we will not be having the vote at 5:30 tonight.

Let me make a couple of comments. I know anxieties are high concerning the so-called nuclear option, or what we call the constitutional option. I hesitate to take up time. If anybody comes to talk about the highway bill, we will stop and talk about the highway bill.

If you stop and realize what we really want, what we have been asking for is a vote. People are entitled to have a vote on the floor of this Senate. They are nominees. You may not like the nominees of the President for the circuit court positions, but certainly these people at least deserve an up-or-down vote.

It is kind of interesting to see how the minority has changed its mind from just a short period ago.

Senator BIDEN on March 19, 1997, said:

But I also respectfully suggest that everyone who is nominated ought to have a shot, to have a hearing and to have a shot to be heard on the floor and have a vote on the floor . . . It is totally appropriate for Republicans to reject every single nominee if they want to. That is within their right. But it is not, I will respectfully request, Madam President, appropriate not to have hearings on them, not to bring them to the floor and not to allow a vote . . .

Senator BOXER on May 14, 1997, said:

According to the U.S. Constitution, the President nominates, and the Senate shall provide advice and consent. It is not the role of the Senate to obstruct the process and prevent numbers of highly qualified nominees from even being given the opportunity for a vote on the Senate floor.

Senator DASCHLE on October 5, 1999, said:

I find it simply baffling that a Senator would vote against even voting on a judicial nomination . . . We have a constitutional outlet for antipathy against a judicial nominee—a vote against that nominee.

Senator DURBIN on September 28, 1998, said:

I think that responsibility requires us to act in a timely fashion on nominees sent before us. The reason I oppose cloture is I would like to see that the Senate shall also be held to the responsibility of acting in a timely fashion. If, after 150 days languishing in a committee there is no report on an individual, the name should come to the floor. If, after 150 days languishing on the Executive Calendar that name has not been called for a vote, it should be. Vote the person up or down. They are qualified or they are not.

Senator FEINSTEIN on September 16, 1999, said:

A nominee is entitled to a vote. Vote them up; vote them down . . . What this does to a [nominee's] life is, it leaves them in limbo . . . It is our job to confirm these judges. If we don't like them, we can vote against them. That is the honest thing to do. If there are things in their background, in their abilities that don't pass muster, vote no.

On October 4, 1999, she said:

Our institutional integrity requires an up-or-down vote.

And on May 19, 1997, Senator FEINSTEIN said:

Mr. President, the time has come to act on these nominations. I'm not asking for a rubber stamp; let's hold hearings on those nominees who haven't had them, and vote on all of them, up or down, yes or no.

Senator KENNEDY on January 28, 1998, said:

The Constitution is clear that only individuals acceptable to both the President and the Senate should be confirmed. The President and the Senate do not always agree. But we should resolve these disagreements by voting on these nominees—yes or no.

And on February 3, 1998:

We owe it to Americans across the country to give these nominees a vote. If our Republican colleagues don't like them, vote against them. But give them a vote.

Senator KOHL on August 21, 1999, said:

[T]here are many other deserving nominees out there. Let's not play favorites. These

nominees, who have to put their lives on hold waiting for us to act, deserve an 'up or down' vote.

Senator LAUTENBERG on June 21, 1995, said:

Talking about the fairness of the system and how it is equitable for a minority to restrict the majority view, why can we not have a straight up-or-down vote on this without threats of filibuster? When it was Robert Bork or John Tower or Clarence Thomas, even though there was strong opposition, many Senators opposed them. The fact is that the votes were held here, up or down.

Senator LEAHY on June 21, 1995, said:

When President Bush nominated Clarence Thomas to the U.S. Supreme Court, I was the first member of the Senate to declare my opposition to his nomination. I did not believe that Clarence Thomas was qualified to serve on the Court. Even with strong reservations, I felt that Judge Thomas deserved an up-or-down vote.

On October 14, 1997:

I cannot recall a judicial nomination being successfully filibustered. I do recall earlier this year when the Republican Chairman of the Judiciary Committee and I noted how improper it would be to filibuster a judicial nomination.

October 22, 1997:

I hope we might reach a point where we as a Senate will accept our responsibility and vote people up or vote them down. Bring the names here. If we want to vote against them, vote against them.

June 18, 1998:

If we want to vote against somebody, vote against them. I respect that. State your reasons. I respect that. But don't hold up a qualified judicial nominee . . . I have stated over and over again on this floor . . . that I would object and fight against any filibuster on a judge, whether it is somebody I opposed or supported; that I felt the Senate should do its duty. If we don't like somebody the President nominates, vote him or her down.

September 16, 1999:

I . . . do not want to see the Senate go down a path where a minority of the Senate is determining a judge's fate on votes of 41 . . . [D]uring the Republican administrations I rarely ever voted against a nomination by either President Reagan or President Bush. There were a couple I did. I also took the floor on occasion filibusters to hold them up and believe that we should have a vote up or down.

Again on September 16, 1999:

I do not want to get having to invoke cloture on judicial nominations. I think it is a bad precedent.

October 1, 1999:

Nominees deserve to be treated with dignity and dispatch, not delayed for 2 and 3 years. We are talking about people going to the Federal judiciary, a third independent branch of Government. They are entitled to dignity and respect. They are not entitled atomically for us to vote aye, but they are entitled to a vote, aye or nay.

October 3, 1999:

When we hold a nominee up by not allowing them a vote and not taking any action one way or the other, we are . . . doing a terrible disservice to the man or woman to whom we do this.

March 7, 2000:

The Chief Justice of the United States Supreme Court said: "The Senate is surely

under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or vote him down." Which is exactly what I would like.

October 11, 2000:

I have said on the floor, although we are different parties, I have agreed with Gov. George Bush, who has said that in the Senate a nominee ought to get a [floor] vote, up or down, within 60 days.

Senator LEVIN on June 21, 1995, said:

The President is entitled to his nominee, if a majority of the Senate consent.

Senator LINCOLN at a press conference on September 14, 2000, said:

If we want people to respect their government again, then government must act respectably. It's my hope that we'll take the necessary steps to give these men and these women especially the up or down vote that they deserve.

Senator REID on March 7, 2000, said:

Once they get out of committee, let's bring them here and vote up or down on them. . . . I think anybody who has to wait 4 years deserves an up-or-down vote.

. . . If there is a Senator who believes there is a problem with any judge, whether it is the one we are going to vote on at 5 o'clock or the two we are going to vote on tomorrow, or Thursday, they have every right to come to talk at whatever length they want. But with Judge Paez, it has been 4 years. There has been ample opportunity to talk about this man. He has bipartisan support.

On June 9, 2001, in an interview on Evans, Novak, Hunt, and Shields said:

[W]e should have up or down votes in the committee and on the floor.

Senator SCHUMER on March 7, 2000, said:

The basic issue of holding up judgeships is the issue before us, not the qualifications of judges, which we can always debate. The problem is it takes so long for us to debate those qualifications. It is an example of Government not fulfilling its constitutional mandate because the President nominates, and we are charged with voting on the nominees.

. . . I also plead with my colleagues to move judges with alacrity—vote them up or down. But this delay makes a mockery of the Constitution, makes a mockery of the fact that we are here working, and makes a mockery of the lives of very sincere people who have put themselves forward to be judges and then they hang out there in limbo.

These are people who are now saying they do not want to have a vote on these nominees. We have nominees who have been waiting not for weeks or months but for years. I believe some of these Senators who before had a philosophy that everyone is entitled to a vote ought to turn around and give the current nominees a vote. I have a great deal of respect for these people, except I would like to have them express some level of consistency.

The issue has become a bit clouded and confusing. When one talks about the various polls, I suggest that one can word a question to get almost any kind of answer one wants. When it gets down to the facts, the Constitution says the President nominates and the Senate is either to confirm or not con-

firm. It does not say anything about a mandatory supermajority. It just says confirmed. That is a simple majority, Mr. President.

Again, I invite Members to come to the Chamber. We are going to keep the floor open. There will not be any votes tonight on the amendments. We are down to about four amendments, although they should be debated tonight if at all possible. We need to get the debates behind us so we will be prepared to vote tomorrow morning.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. INHOFE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### INACCURATE PRESS REPORTS

Mr. INHOFE. Mr. President, while we are waiting for Members to come down to the Senate floor to offer their amendments, to talk about their amendments, and be prepared for votes tomorrow morning, I will share with you that we have had a lot of erroneous reports concerning what is going on in Iraq and in other sensitive areas of the world. Quite frankly, I believe the greatest disservice that has been done to our troops in Iraq has been by the press, by the press not giving an accurate accounting as to what is really happening there.

I am a member of the Senate Armed Services Committee, and as such I have taken on the responsibility of spending time in Iraq, Afghanistan, Africa, and different places where terrorism may come due to the squeeze in the Middle East. But as far as Iraq is concerned, I will share a couple of experiences.

One was a couple days after the January 30 election. So many people in the media were trying to say the election is not going to come off on January 30, it is not going to happen; democracy is not going to prevail there; they are not going to be able to make the deadlines; they are not going to be able to handle the elections and they are not capable of doing it on their own; they do not have the security because they would have to provide all the security for the elections. Yet a few days after that, you might remember, of the three elements over there, the Sunnis were the ones—not the Shiites or the Kurds—but the Sunnis were the ones wanting to obstruct the elections—the most anti-American of all the groups. Yet the day after the election, the two primary Sunni leaders stood and said publicly that they were surprised it went the way it did. They wanted to be in on this. They wanted to participate. We know subsequent to that they have.

I remember testimonials by different people who had participated in that election. One was a lady who said she could not read the ballot because of the tears in her eyes. She couldn't see the ballot.

Another person told me through a translator that she was in there to vote, and it occurred to her at the time they were voting that this was not just the first time in 35 years of a bloody regime of Saddam Hussein, but it was the first time in 7,000 years that they had an opportunity for self-determination.

It is a huge thing happening over there. Who would ever have dreamed at any time in the last 35 years that they would actually be participating in a free election?

Now we have seen what has happened since then. Sure, the terrorists over there who do not want this to happen are out there and they are killing as many of the Iraqis as possible to try to obstruct this new freedom that is coming their way.

The last time I was there, I decided it would be a good idea to spend time in the Sunni triangle. That is where most of the hostilities are. It was the Sunnis who were the ones holding out last, the ones who were supporting Saddam Hussein. I recall going to Falluja, just a matter of a few weeks ago, and in Falluja there was a general whose name was Mahdi. He was the general, the commanding officer of the brigade. He was the brigade commander for Saddam Hussein. He hated Americans and he had the background to demonstrate how deeply that hatred went, the murders and all these things going on.

Yet that general, after we moved the Marines into Falluja and they started going door to door, and they were embedded with the Iraqis, this general was so impressed with the Marines that he made a statement. When they rotated the Marines out and said the Marines were going to have to go into a rotation, they had become so close working and fighting together that when they all got together before the Marines left, he said they all cried. There was a general looking at me saying: We cried because we didn't want the Marines to leave. He renamed the security forces of Falluja the Iraqi Marines. He named them after us.

While we were there in Tikrit, the home of Saddam Hussein, there was an explosion. It was at a place they called a police station, but it was a training area where they were training Iraqis for the security forces. It killed 10 immediately and seriously injured 30 more so they could not be trained. The families of these 40 individuals who were either killed or were severely injured offered up another member of each of their families to substitute for the one who was killed or the one who was injured. It was the type of sacrifice you would never dream possible a few years before—a few days before, really.

I remember going all over the Sunni triangle in a Blackhawk helicopter, 100 feet off the ground. That is the only safe way to get there. There are terrorists who have SAMs, surface-to-air missiles, although some pretty crude.

Many American families who have sent care packages to the troops over there—candy, cookies, these different

things—what they have done with these is repackaged them and, as we were going over the Sunni triangle and looked down at these small villages, all the kids were out there and we threw them candy and things like that, and they were waving American flags and cheering. This is not the picture you get from the media.

I applaud the job our guys and gals have done over there, our troops. Of course, many have lost their lives, but people don't stop to realize how many more lives would have been lost if we had not been involved in that area, offering that kind of freedom.

Now we see a lot of terrorists are going into other areas. One of the good things I would announce that is going on right now is down in Africa we are now in the process of assisting Africans in forming five African brigades, and these African brigades, we will put them in a position to help them train themselves so when something like this erupts down there it will not be the Americans who have to do it.

I just wanted to take this time to applaud our troops for the great job they are doing. I really believe, as great a disservice as the press has provided, that the people of America know better. They are showing they do know better.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. INHOFE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 761 TO AMENDMENT NO. 605

Mr. INHOFE. Mr. President, I ask unanimous consent that the pending amendment be laid aside for the consideration of the managers' amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from Oklahoma [Mr. INHOFE], for himself and Mr. JEFFORDS, proposes an amendment numbered 761.

Mr. INHOFE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under "Text of amendments.")

Mr. INHOFE. Mr. President, I ask for adoption of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 761) was agreed to.

Mr. INHOFE. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. SALAZAR. Mr. President, I ask unanimous consent that I be allowed to address the Senate as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBUTE TO DETECTIVE DONALD YOUNG

Mr. SALAZAR. Mr. President, it is with tremendous sadness that I rise today to commemorate the life and work of Detective Donald "Donnie" Young of the Denver Police Department.

In the early morning hours of Sunday, May 8, Detective Young tragically lost his life while working off-duty as a security guard at a private party in Denver. Today, I join the people of Denver and my home State of Colorado in mourning the loss of a dedicated public servant, and a devoted husband and father.

Detective Young is remembered by his family, friends, and colleagues as a man who was always willing to help others in need, whether by hopping out of his truck on a broken foot to help a stranded driver out of a snowdrift, lightening the mood with his unique sense of humor, or working overtime to help protect women from the threat of domestic violence. Donnie never failed to embody the selflessness and compassion so common among his 850,000 brothers and sisters serving as law enforcement officers in this country today.

It will come as no surprise to those men and women and anyone familiar with their line of work that Donnie was also exceedingly modest; it is consequently left to the rest of us to give the many awards and honors he received over the course of his 12-year career in law enforcement the attention they deserve. In recognition of the bravery and dedication he displayed on countless occasions, Detective Young received three of the Denver Police Department's four most prestigious awards, including the medal of honor for his role in the 1994 rescue of two kidnapping victims.

Yesterday, more than 20,000 people gathered in our Nation's capital to formally honor and remember Detective Young and other law enforcement officers recently injured or slain in the line of duty. This day was marked in part by a Senate resolution I had the privilege of cosponsoring that recognizes May 15, 2005, as Peace Officers Memorial Day, in honor of Federal, State, and local officers killed or disabled while working to protect the public. Having served as Attorney General for the State of Colorado, I know firsthand the sacrifices our men and women in law enforcement make on a daily basis, and I am deeply proud to have had the honor of serving in the same family as Detective Young and others like him.

Today, I join my former brothers and sisters in the law enforcement community—in Colorado and across the Nation—in grieving the loss of a passionate and capable public servant, Detective Donald "Donnie" Young.

I thank the Chair. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll. The legislative clerk proceeded to call the roll.

Mr. INHOFE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 652

Mr. INHOFE. Mr. President, I ask for the regular order with respect to the Dorgan amendment, No. 652.

The PRESIDING OFFICER. The amendment is now pending.

Mr. INHOFE. Mr. President, I raise a point of order that the amendment is not germane.

The PRESIDING OFFICER. The point of order is well taken and the amendment falls.

AMENDMENTS NOS. 636 AND 674 WITHDRAWN

Mr. INHOFE. Mr. President, I ask unanimous consent the Ensign amendment No. 636 and the Schumer amendment No. 674 be withdrawn.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WYDEN. Mr. President, I am very pleased to report that the Senate transportation bill not only continues but also greatly expands a program I authored in the TEA-21 law to promote smart growth initiatives. When TEA-21 became law in 1998, this pilot program was the first Federal program ever created to provide incentives to help States and local governments pursue smart growth policies.

The good news is that the Senate transportation bill recognizes the value of this groundbreaking program by providing a substantial funding increase.

The original smart growth pilot program I authored, the Transportation and Community and System Preservation Program, TCSP, provided \$25 million per year to investigate and address the relationships between transportation projects, communities and the environment. Under the SAFETEA bill now before the Senate, funding for this program would nearly double to about \$47 million per year.

The not so good news is that 7 years after Congress enacted the TCSP program it remains the only Federal program to provide incentives for smart growth. In the last 7 years, the problems of urban sprawl have only gotten worse. Clearly more needs to be done.

Sprawl development not only hurts our citizens where they live and breathe, it also hits them in their wallets. A number of studies have come out that show the costs of sprawling growth are significantly higher than more compact, managed growth patterns. These studies show that taxpayers can save billions of dollars in public facility construction and operation and maintenance costs by opting for growth management.

Because of the major impacts federally funded transportation projects can have, there is an appropriate role for the Federal Government in ensuring these projects and the development they spawn are both economically and environmentally sound.

That role should not be to embroil the Federal Government in land use decisions that have historically been State and local issues. We do not want Federal zoning.

Instead, the proper role for the Federal Government is to create incentives to encourage and build on the State and local efforts to address transportation and growth that are already underway. I am very pleased that the Senate SAFETEA bill extends and expands the TCSP program to help local communities grow in environmentally sustainable ways by creating incentives for smart growth management.

The additional funding for TCSP in the Senate transportation bill is a good start. But if we are going to improve both our Nation's infrastructure and our quality of life, we need to do more at the Federal level to provide incentives to support smart growth policies.

My home State of Oregon leads the Nation in developing innovative approaches to manage our growth and to tie transportation policies in to growth management. Our statewide land conservation and development program requires each municipality to establish an urban growth boundary to define both the areas where growth and development should occur and those areas that should be protected from development. This system keeps agricultural and forest lands in productive use and preserves "green corridors" for hiking, biking and other recreational uses that are located in or close to urban areas. Our transportation planning and construction efforts reinforce these policies by not only avoiding developing in environmentally sensitive areas but also by helping make the areas where we want development to occur more accessible.

Oregon recognizes that it is not enough to tell people where they can not build. For our system to work, we have to make it easier to develop the areas where we want growth to occur. And we do not just give lip service to this principle. We actually put our money where our mouth is to make sure the development we want occurs.

These policies make the State of Oregon, Metro, the city of Portland, and other localities in our State ideal candidates to apply for funding under the Transportation and Community and System Preservation Program.

I greatly appreciate the support of Chairman INHOFE, Chairman BOND and Senators JEFFORDS and BAUCUS in working with me to increase funding substantially for this important program in the bill. Thanks to their efforts the bill now before the Senate will enable State and local smart growth policies to merge more smoothly with our transportation policies.

As Congress considers other Federal infrastructure programs, I will be looking for ways to build on the success of TCSP. The TCSP model can also be adapted for water, sewer and other federally funded infrastructure to help save taxpayers money and support

State and local governments smart growth efforts. By following that approach, Congress can provide our citizens with both better infrastructure and better quality of life.

Mr. INHOFE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### ADDITIONAL STATEMENTS

##### RECOGNITION OF COL. KENT MURPHY

• Mr. ALLARD. Mr. President, I would like to bring to the Senate's attention the retirement of a distinguished member of our military, Col. Kent Murphy, who is retiring this year after a distinguished 25-year career in the Air Force.

Colonel Murphy started his career at the U.S. Air Force Academy, graduating in 1980. From there, he went on to the Uniformed Services University of the Health Sciences, USUHS, and became a doctor in the Air Force Medical Corps. Dr. Murphy served in varying assignments in the United States and overseas while in the Air Force. He has held surgical positions ranging from a F-16 flight surgeon to a staff surgeon in the Air Force Academy Hospital's Department of Otolaryngology, where he later became department head. He has been an adjunct assistant professor at USUHS and the senior otolaryngology malpractice consultant for the Office of the Air Force Surgeon General. Certainly, such a career serving his country as a doctor in the Air Force would be laudable in its own right, but Colonel Murphy went far beyond that.

In 1997, Colonel Murphy founded the Center of Excellence for Medical Multimedia at the U.S. Air Force Academy. There, Colonel Murphy pioneered the concept of information therapy throughout the Air Force Medical Service. He developed high-tech programs, using the Internet, video and CD/DVD ROM, that are the cornerstone of Air Force efforts to educate service members, dependents and retirees about important medical conditions such as pregnancy, hypertension and diabetes. Additionally, he served as the chairman of the Prorenata Health Media Foundation to help create access

to these innovative programs for underserved populations across the Nation. In August of 2003, he was awarded the Frank Brown Berry Prize by US Medicine magazine—the highest honor in Federal Healthcare. Colonel Murphy is the only Air Force physician to have won this prestigious honor and the youngest recipient to date.

I am proud to call Colonel Murphy a friend and thank him today for his service to the Air Force and our country. I would be remiss however if I did not also thank his loyal wife Cindy. As anyone who has been around the military will attest, a good military spouse is vital to the success of the servicemember. As Colonel and Mrs. Murphy head out now into civilian practice, I know that they will continue to make lasting contributions to all Americans.●

##### THE RECOGNITION OF DETECTIVE DONALD R. "DONNIE" YOUNG

• Mr. ALLARD. Mr. President, I rise to honor all law enforcement officers who protect our families and communities against crime during National Police Week 2005. Also, I ask to pay special tribute to Detective Donald R. Young of Denver, CO, and others officers like him who have given their lives in service.

Communities readily rely on law enforcement officers to answer the call in times of great need. These men and women serve to enforce not only our laws, but to defend the weakest and most vulnerable among us. I think it is suitable that we salute and recognize these dedicated heroes with a National Police Week.

Detective Donald R. "Donnie" Young was shot and killed in Denver, CO, on May 8, 2005. He was working off duty at the time, providing security detail at a baptismal event. Detective Young was a 12-year veteran of the Denver Police Department. He leaves behind a wife and two young daughters.

Along with Detective Donald R. Young, I ask that we pay homage to all our fallen heroes. Law enforcement officers knowingly put themselves in harms way every day. It is important to take this time to remember their service. We must acknowledge their efforts as some of the bravest among us and share our gratitude for their sacrifice with their families.

I rise to humbly pay my respect to law enforcement officers everywhere and honor the legacy that fallen officers leave behind.●

##### RECOGNIZING KAHUKU HIGH SCHOOL "WE THE PEOPLE" TEAM

• Mr. AKAKA. Mr. President, it gives me great pleasure and pride to announce that students from Kahuku High School, on the Island of Oahu, honorably represented Hawaii at the national finals of "We the People: The Citizen and the Constitution." These Hawaii students joined more than 1,200